

Appeal Decision

Site visit made on 4 January 2017

by David Walker MA MRTPI

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

Decision date: 20th March 2017

Appeal Ref: APP/X1118/W/16/3157373

Land west of Oakland Park South, Sticklepath, Barnstaple EX31 2HX

- 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 John Evans against the decision of North Devon District Council.
 - The application Ref 57310, dated 4 April 2014, was refused by notice dated 30 June 2016.
 - The development proposed is outline application for 34 dwellings (amended plans and description).
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Decision

1. The appeal is allowed and outline planning permission is granted for 34 dwellings at Land west of Oakland Park South, Sticklepath, Barnstaple EX31 2HX in accordance with the terms of the application, Ref 57310, dated 4 April 2014, subject to the conditions set out in the attached schedule.

Preliminary Matters

2. At the time of the outline planning application the Council made a request for full details relating to the matters of access, layout, scale, and landscaping. The submitted details revised the proposal into a smaller development of 34 dwellings. The parties are in agreement that this revised scheme was the basis of the Council's decision and that only appearance remains as a reserved matter. I have determined the appeal on this basis treating the individual dwelling plans provided as being only illustrative.
3. The Council amended the address of the proposed development in its decision notice. This better reflects the location of the development. As this has also been used by the appellant at section D of the appeal form I have modified the address accordingly.
4. A signed and dated unilateral undertaking was submitted with the appeal relating to affordable housing, open space management and the payment of a financial contribution towards education facilities. I return to the adequacy of this below.

Main Issues

5. The main issues are:
 - the effect of the proposal on the character and appearance of the area
 - the effect on housing supply; and
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- the planning balance having regard to national policy and sustainable development

Reasons

Character and appearance

6. The appeal site is formed from part of an open field located at the fringe of the suburb of Bickington at the outskirts of Barnstaple. There is existing housing to the east at Oakland Park South and to the south around Ellerslie Road. The part of the site proposed for development is unenclosed to the north and west with open countryside beyond. The whole of the site falls outside of the settlement boundary for Barnstaple delineated within the North Devon Local Plan 2006 (the LP) under saved Policy HSG2. A listed building, Ellerslie Tower, is relatively close and I have a duty to give special regard to the desirability of preserving its setting.
7. Into this undeveloped area the revised proposal would introduce 34 new dwellings, public open space, mitigation landscape planting, drainage works and access gained over a short cul-de-sac leading off Oakland Park South. Only indicative house designs have been provided, appearance being a reserved matter, but it is indicated these would be of bungalow design to reflect the form of development at Oakland Park South.
8. While there are no landscape designations affecting the appeal site, Policy ST09 of the emerging North Devon and Torridge Local Plan 2011-2031 (the ENDTLP) includes it within a Coastal and Estuarine Zone. This underlines the Council's intention to promote development that does not detract from the unspoilt character, appearance and tranquillity of the area. I acknowledge the plan has been subject to public participation and that the policy has received widespread support from interested parties to the appeal. However, the plan has yet to be found sound and may be subject to further changes. As a result it attracts only limited weight as a consideration.
9. The Taw Torridge Estuary Landscape Character Area 2002 and Estuaries Landscape Character Type 2010 assessments identify the openness of the estuary, its relative tranquillity and scenic quality, and the use of its setting as a recreational resource as key characteristics and special qualities. On this basis there can be no doubt that the open countryside of the appeal site forms part of a wider landscape of some sensitivity. I note the findings of an Inspector in a recent appeal at West Yelland nearby agree with this assessment.
10. Although the development area would be confined to the highest part of the field, effectively forming a plateau in the topography, the proposed bungalows would remain visible from the estuary. There would be adverse visual impacts as a result of new buildings being positioned close to the skyline. Although at only a single storey roof ridges would not extend to a height that would exceed the existing buildings and trees located at the highest point around Ellerslie Road.
11. The development would be extensively screened with a new hedge bank with tree and shrub planting along a newly formed boundary to the open countryside. A drawing submitted with the unilateral undertaking shows that a 3 m wide maintenance strip could be achieved. It has not been consulted

- upon. However, as the additional land required falls within the boundary of the original application site a detailed scheme and management plan could be secured by condition.
12. I acknowledge that mitigation planting would take some time to become established during which time landscape impacts would be greater. Over time these impacts would diminish. The revised hedge bank indicated within the unilateral undertaking would also enshroud the switching gear station to provide additional screening. The pumping station and field drains that would lie beyond the new hedge boundary are underground installations that would be barely discernable once established.
 13. At Bickington the magnitude of visual impacts as a consequence of the introduction of new buildings in close proximity to existing dwellings would be in the range of major to moderate. It would undoubtedly result in a significant change. However, from further along the estuary at Barnstaple and the Taw Bridge existing woodland provides a visual break between the appeal site and the town. At these vantage points new development would only be seen in glimpses between trees and would not be prominent.
 14. In available views along the Tarka Trail on both sides of the estuary the proposed bungalows would consolidate the loose pattern of development with a greater housing density. The additional development is unlikely to be completely screened by the proposed hedge bank. Although when this becomes established at a predicted height of 4 m only ridges would remain visible against the backdrop of existing houses, skyline trees and hedgerows. Given the edge of settlement position of the appeal site, the mitigation planting proposed, and the extensive panoramas available from along the national trail, the proposal would not lead to significant harm.
 15. From elevated vantage points at the village of Ashford on the opposite side of the estuary the screening effect of the hedge bank would be less effective. However, the existing views are panoramic and wide reaching and the proposal would appear as only a minor extension to the far reaching western limits of Barnstaple. People travelling in holiday-bound traffic along the A361 would be in moving vehicles with only glimpses afforded of the proposal. I am satisfied that this limited visual impact would not be harmful.
 16. Although Ellerslie Tower is separated from the appeal site by a domestic garden and a double hedge with a lane between it was built as a lookout tower and has commanding views over the landscape. It has significance as a local landmark being visible across the River Taw. The proposal would reduce the amount of undeveloped land in the vicinity of the tower but an open setting would be retained to the north and west. The tower would continue to be seen as a landmark. With other urban development located close by I am satisfied that the proposal would have a neutral effect on the setting of the listed building and its significance as a heritage asset would be preserved.
 17. Overall, the appeal site would be located within an open and undeveloped area of some sensitivity which would be lost as a result of the proposed development. It would be contrary to saved Policy ENV1 of the LP which seeks to protect the countryside for its own sake. However, I am satisfied that adverse visual impacts could be reduced to acceptable levels by the proposed hedge bank. Subject to the provision of a suitably detailed scheme and management arrangements it would accord with the requirements of saved

Policy DVS2 of the LP for development to include a relevant landscaping scheme along with its implementation and maintenance.

Housing supply

18. The independent examination into the soundness of the ENDTLP concluded in December 2016 with a number of modifications being sought by the appointed Inspector. The Council concedes that these modifications affect the housing land supply for the area. Accordingly, a five-year supply of deliverable housing site as required at paragraph 47 of the National Planning Policy Framework (the Framework) cannot be demonstrated.
19. The Council has indicated that it is taking all reasonable steps to boost significantly the supply of housing. However, of the range of measures it has identified I have not been provided with any substantive evidence that the shortfall is likely to be remedied. 34 additional dwellings that would be provided by the proposal would make a significant contribution to the undersupply in the short term.
20. Therefore, while the appeal site was previously considered through a strategic housing land availability assessment (SHLAA) the exercise represented a point in time since overtaken by the current poor housing land supply. In the absence of a five-year supply of deliverable housing sites the contribution the proposed development would make to meeting the identifiable housing needs of the area weighs heavily in its favour.

Planning balance

21. It is the Government's policy at paragraph 49 of the Framework that where authorities cannot demonstrate a five-year supply of deliverable housing sites local policies should not to be considered up-to-date. In these circumstances paragraph 14 of the Framework sets out a presumption in favour of sustainable development. Specifically, at the fourth bullet point, paragraph 14 states that where relevant policies are out-of-date permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework taken as a whole, or specific policies of the Framework indicate development should be restricted.
22. The contribution of the additional dwellings of the proposal would be significant. In addition, 12 of the units would be delivered as affordable housing providing a considerable benefit to the community's social and economic wellbeing while complying with the requirements of saved Policy HSG7 of the LP. While there would be some adverse impacts on the character and appearance of the area these could be managed to an acceptable level.
23. The Council has also referenced saved Policy ENV7 of the LP which seeks to avoid the loss of the best and most versatile agricultural land (BMV). I have nothing before me to confirm the agricultural quality of the land. Nonetheless, even if it were to be found to be BMV land only a relatively small area would be lost to the provision of much needed new homes and the harm would be limited.
24. Overall, I find the harm to the character and appearance of the area would be modest, and in the absence of a five-year housing land supply the provision of deliverable housing attracts significant weight. In line with paragraph 14 of the

Framework, the adverse impacts would not significantly and demonstrably outweigh the benefits. This is a significant material consideration which outweighs any conflict with local plan policies. The appeal scheme would therefore be a sustainable development as sought by the Framework.

Other Matters

25. The layout of the development is not a reserved matter and while it does not meet the expectations of the Police Architectural Liaison Officer I note that crime levels are generally low in the area. With regard to setting a precedent for further housing on the remaining open fields of the area, I have determined the appeal in the light of the available landscape evidence and housing supply information. Any other proposal would be assessed on the merits of the circumstances and relevant information at the time.
26. I acknowledge concern over property values for existing home owners but there is nothing to indicate that harmful effects would arise. In terms of highway capacity, and road safety generally, the existing cul-de-sac would be widened to achieve a 5.5 m carriageway leaving only one footway at 2 m in width. There is little evidence of harm to highway interests in the information provided to me, including the effects of construction traffic movements along the cul-de-sac. Mud on the road can be minimised by the use of suitable conditions.
27. As surface water infrastructure can be secured by way of a condition I am satisfied this element of the scheme would accord with the surface water management requirements of saved Policies DVS6 and DVS7 of the LP. The ecological assessment puts forward mitigation which would ensure that there would be no harm to biodiversity.

Planning Obligation

28. The submitted unilateral undertaking would secure 12 of the units as affordable housing. Although delivery would be phased until after 70% of the open market units had been provided, having regard to the relatively small size of the development I find this to be reasonable. A financial contribution towards educational facilities would help to accommodate the demands of additional families living in the area. While the full contribution would not be made until all of the units had been provided I am satisfied the necessary mitigation would be delivered over the lifetime of the scheme.
29. It is necessary that the public open space is adequately managed to accord with the requirements of saved Policy REC5 of the LP in accordance with a plan to be agreed with the Council, and this would be secured under the obligation. I acknowledge that there is no provision for a contribution toward the provision of off-site recreational open space. This was not a matter identified in need of mitigation in the Council's decision on the application.
30. The provision of hedgerow works in accordance with a boundary hedgerow management plan would ensure the delivery and long term maintenance of this essential element of the scheme. I further intend to condition the provision of a suitable scheme for hedgerow works and management to ensure a suitable specification is agreed with the Council. Surface water drainage would also be secured through the submitted obligation together with measures for long term maintenance.

31. I find the obligations contained within the unilateral undertaking to be necessary and directly related in scale and kind to the proposed development. I have accordingly taken them into account in reaching my decision.

Conditions

32. I have attached conditions identifying the period for implementation and the approved plans and documents in the interest of certainty. Anomalies with the submitted plans lead to the necessary requirement for revised landscape details to be submitted through reserved matters. To this I add the requirement for details of existing and proposed levels to be agreed in order to safeguard visual interests. A construction management plan is necessary before any development commences in order to minimise harmful impacts during construction. For the same reason I add restrictions on construction hours.
33. Further details relating to ecology, surface water drainage and archaeology go to the heart of the development and are necessarily pre-commencement requirements to ensure these matters are properly addressed. The Council has also requested a survey of the potential for ground contamination. While there is little evidence of contamination I am mindful of the need for a precautionary approach and of the advice of the Environmental Health Officer and agree this is a necessary pre-commencement requirement.
34. To ensure the safety of road users and pedestrians, and adequate access for all traffic during the construction period, it is necessary that the access road is constructed and completed in accordance with a programme and details to be agreed. A suggested condition was provided by the Council relating to the control of the emergency access shown on the layout. As this access cannot be justified on highway safety grounds I do not consider such a condition would be reasonable. A further suggested condition sought energy saving measures through improvements in energy efficiency performance or on-site low carbon technologies. I have not been provided with any applicable local plan policy against which to assess the necessity of this requirement and accordingly do not find it to be related to planning.

Conclusion

35. For the reasons given above I conclude that the appeal should be allowed.

David Walker

INSPECTOR

Schedule of Conditions

- 1) Details of the appearance of the development (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
- 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the plans and documents:
- 5) Block Plan at Scale 1:500 Rev A dated February 2016
Proposed Access Drg No 12194-08/A
Play Equipment Drg Annotated 'Nature Inspired Design 1'
Public Open Space Detail Drg No JB POS1
Road Sections dated February 2016
Arboricultural Impact Assessment dated January 2013
Preliminary Ecological Appraisal dated December 2015
Nest and Nut Search statement dated March 2016
Memo Regarding Scale – dated 29th January 2016
Flood Risk Assessment dated May 2016
Supporting Planning Statement dated February 2016, and
Transport Assessment dated December 2015.
- 6) As part of the reserved matters application details of hard and soft landscaping works together with scaled drawing(s) showing existing levels on the site and proposed finished floor levels of the dwellings and a section to include the ridge heights of the development in relation to the existing estate to the east shall be submitted to and approved in writing by the local planning authority. The development shall be undertaken in accordance with such drawings.
- 7) Prior to the development hereby approved commencing a scheme of mitigation hedgerow works/planting and an associated management plan shall be submitted to and agreed in writing by the local planning authority. The development shall be undertaken in accordance with such a scheme.
- 8) No works or development shall take place until a scheme for the protection of retained trees and hedges, and future planting areas consisting of a Tree Protection Plan (TPP) and Arboricultural Method Statement (AMS) in accordance with British Standard - BS 5837:2012 'Trees in relation to design, demolition and construction – Recommendations' has been agreed in writing with the local planning

authority and these works shall be carried out as approved by the local planning authority. This scheme shall include:

(a) a tree protection plan (TPP) that shows the precise location of protective barriers and the extent and type of any ground protection or additional measures to be installed; and

(b) arboricultural method statement (AMS) that shows how a precautionary approach to tree protection will be adopted during the course of development and how operations will be undertaken and monitored to ensure that there are minimal risks of adverse impacts on trees, hedges and future planting areas and that appropriate mitigation or compensation is provided by the developer should the tree protection plan and arboricultural method statement fail to ensure adequate protection of retained tree and hedges during the course of construction.

- 9) Prior to the development hereby approved commencing, an updated Ecological Assessment, which reviews the detailed scheme together with any required survey work and details of any necessary mitigation works shall be submitted to and agreed in writing with the local planning authority together with a Landscape and Ecological Management Plan (LEMP) to include a programme for the delivery of mitigation works and their future management and lighting strategy for the development. The development shall then be carried out in accordance with all of these agreed details.
- 10) No part of the development hereby permitted shall be commenced until a detailed permanent surface water drainage strategy and management plan has been submitted to, and approved in writing by, the local planning authority, in consultation with Devon County Council as the Lead Local Flood Authority. The development shall then be carried out in accordance with these agreed details.
- 11) No part of the development hereby permitted shall be commenced until a detailed surface water drainage management plan for the full period of the development's construction has been submitted to, and approved in writing by, the local planning authority, with consultation with Devon County Council as the Lead Local Flood Authority.
- 12) No development shall take place until the applicant has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been submitted by the applicant and approved by the local planning authority. The development shall be carried out at all times in strict accordance with the approved scheme, or such other details as may be subsequently agreed in writing by the local planning authority.
- 13) Prior to the commencement of any site clearance, groundworks or construction, the local planning authority shall be provided with the results of a phase one (desktop) survey for potential ground contamination. The report shall be prepared by a suitably qualified person and sufficient to identify any and all potential sources of ground contamination on any part of the development site. Thereafter, depending on the outcome of phase one, a proposal for any phase two (intrusive) survey that may be required shall be presented to and agreed with the planning authority. The work shall then be carried out in accordance with the recommendations set out in these agreed report(s).

- 14) Should any contamination of soil or groundwater not previously identified be discovered during development of the site, the local planning authority should be contacted immediately. Site activities within that sub-phase or part thereof, should be temporarily suspended until such time as a procedure for addressing such contamination, within that sub-phase or part thereof, is agreed upon with the local planning authority or other regulating bodies.
- 15) Prior to the commencement of development, including any site clearance, groundworks or construction (save such preliminary or minor works that the local planning authority may agree in writing), a Construction Management Plan (CMP) to manage the impacts of construction during the life of the works, shall be submitted to and approved in writing by the local planning authority. For the avoidance of doubt and where relevant, the CMP shall include:-
 - a) details of the routing for construction traffic together with measures to regulate the routing of construction traffic
 - b) the times within which traffic can enter and leave the site
 - c) the importation and removal of spoil and soil on site
 - d) the removal /disposal of materials from site, including soil and vegetation
 - e) the location and covering of stockpiles
 - f) details of measures to prevent mud from vehicles leaving the site and must include wheel-washing facilities
 - g) control of fugitive dust from earthworks and construction activities; dust suppression
 - h) a noise control plan which details hours of operation and proposed mitigation measures
 - i) details of any site construction office, compound and ancillary facility buildings
 - j) specified on-site parking for vehicles associated with the construction works and the provision made for access thereto, and
 - k) a point of contact (such as a Construction Liaison Officer/site manager) and details of how complaints will be addressed.

The details so approved and any subsequent amendments as shall be agreed in writing by the local planning authority shall be complied with in full and monitored by the applicants to ensure continuing compliance during the construction of the development.
- 16) During the construction phase no machinery shall be operated, no process shall be carried out and no deliveries taken at or dispatched from the site outside the following times:
 - a) Monday - Friday 08.00 - 18.00
 - b) Saturday 09.00 - 13.00
 - c) nor at any time on Sunday, Bank or Public holidays.
- 17) All hard and soft landscape works shall be carried out in accordance with the approved details. All planting, seeding or turfing comprised in the

approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation or the substantial completion of the development or as provided for in an implementation timetable whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased, shall be replaced in the next planting season with others of similar size and species unless the local planning authority gives written consent to any variations.

- 18) No retained tree, hedge or shrub shall be cut down, uprooted or destroyed, nor shall any retained tree or hedge, be topped or lopped other than in accordance with the approved plans and particulars. If any retained tree, or hedge is removed, uprooted or destroyed or dies, another tree or hedge shall be planted at the same place and that tree or hedge shall be of such size and species, and shall be planted at such time, as may be specified in writing by the local planning authority.
- 19) The proposed estate roads, footways, footpaths, verges, junctions, street lighting, sewers, drains, retaining walls, service routes, surface water outfall, road maintenance/vehicle overhang margins, embankments, visibility splays, accesses, car parking and street furniture shall be constructed and laid out in accordance with details to be approved by the local planning authority in writing before their construction begins. For this purpose, plans and sections, indicating, as appropriate, the design, layout, levels, gradients, materials and method of construction shall be submitted to the local planning authority for approval.
- 20) No other part of the development hereby approved shall be commenced until the access road has been laid out, kerbed, drained and constructed up to base course level for the first 20 metres back from its junction with the public highway with the ironwork set to base course level, the visibility splays required by this permission have been laid out, the carriageway and footway amendments on the public highway required by this permission have been constructed up to base course level and a site compound and car park have been constructed in accordance with details previously submitted for approval.
- 21) The occupation of any dwelling shall not take place until the following works have been carried out to the written satisfaction of the local planning authority:
 - i) the spine road and/or cul-de-sac carriageway including the vehicle turning head within that phase shall have been laid out, kerbed, drained and constructed up to and including base course level with the ironwork set to base course level and the sewers, manholes and service crossings completed
 - ii) the spine road and/or cul-de-sac footways and footpaths which provide that dwelling with direct pedestrian routes to an existing highway maintained at public expense have been constructed up to and including base course level
 - iii) all visibility splays have been laid out to their final level
 - iv) the street lighting for the spine road and/or cul-de-sac and/or footpaths has been erected and commissioned

- v) the car parking and any other vehicular access facility required for the dwelling by this permission have been completed
 - vi) the verge, service margin and vehicle crossing on the road frontage of the dwelling have been completed with the highway boundary properly defined, and
 - vii) the street nameplates for the spine road and/or cul-de-sac have been provided and erected.
- 22) When once constructed and provided in accordance with condition No 21 above, the carriageway, vehicle turning head, footways and footpaths shall be maintained free of obstruction to the free movement of vehicular and pedestrian traffic and the street lighting and nameplates maintained to the satisfaction of the local planning authority.
- 23) Within twelve months of the first occupation of the first dwelling all roads, footways, footpaths, drainage, statutory undertakers' mains and apparatus, junctions, access, retaining wall and visibility splay works shall be wholly completed to the written satisfaction of the local planning authority.
- 24) Provision shall be made within the curtilage of each dwelling for the disposal of surface water so that none discharges onto the highway.
- 25) Individual car parking spaces within any communal parking facilities to be provided as part of the development shall not be allocated to individual dwellings and shall be maintained free of obstructions to their use, such as chains or bollards, by all occupiers of the estate and their visitors.

End of schedule