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## Appeal Decisions

Site visit made on 24 January 2017

**by JP Roberts BSc(Hons), LLB(Hons), MRTPI**

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

**Decision date: 22 March 2017**

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### **Appeal A Ref: APP/P1133/W/16/3160114**

#### **Land at Little Leigh, Holcombe Road, Holcombe**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Leander Developments Ltd against the decision of Teignbridge District Council.
  - The application Ref 16/01247/MAJ, dated 29 April 2016, was refused by notice dated 12 August 2016.
  - The development proposed is residential development of 15 dwellings.
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### **Appeal B Ref: APP/P1133/W/16/3160108**

#### **Land at Little Leigh, Holcombe Road, Holcombe**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval to details required by a condition of a planning permission.
  - The appeal is made by Leander Developments Ltd against the decision of Teignbridge District Council.
  - The application Ref 12/01246/MAJ, dated 29 April 2016, sought approval of details pursuant to condition No 1 of a planning permission Ref 12/03427/MAJ, granted on 20 May 2013.
  - The application was refused by notice dated 6 September 2016.
  - The development proposed is 20 dwellings.
  - The details for which approval is sought are: access, appearance, landscaping, layout and scale.
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## **Decisions**

### **Appeal A**

1. The appeal is dismissed.

### **Appeal B**

2. The appeal is allowed and the reserved matters are approved, namely the access, appearance, landscaping, layout and scale details submitted in pursuance of condition No 1 attached to planning permission Ref 12/03427/MAJ dated 20 May 2013, subject to the conditions set out in the Annex to this decision.

## **Procedural matters**

3. A planning obligation has been entered into in respect of Appeal A, which deals with the provision of affordable housing, the provision and management of public open space and measures to promote sustainable travel. It also offers
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financial contributions to mitigate the effect of the proposal on the Dawlish Warren Special Area of Conservation (SAC) and the Exe Estuary Special Protection Area (SPA). I shall refer to this further below.

## **Main Issues**

4. The Council is satisfied that the submitted planning obligation overcomes the reasons for refusal relating to the mechanism for securing affordable housing and the need to make arrangements to promote sustainable travel and to mitigate the effect on the SAC and SPA.

5. Accordingly, the main issues are:

### **Appeal A**

- i) whether a satisfactory level of affordable housing would be provided;
- ii) whether the proposal would promote inclusive communities;
- iii) whether the layout of the proposed play space would be satisfactory, and

### **Appeal B**

- iv) the effect of the proposal on the character and appearance of the surrounding residential area.

## **Reasons**

### **Appeal A**

#### *Affordable housing*

6. Policy DA5 (Land at Littleleigh, Holcombe) of the Teignbridge Local Plan (LP) 2013-2033 states: "A site of approximately 1.4 hectares is allocated at Littleleigh, Holcombe for up to 35 homes, with a target of 25% affordable homes." The two appeal sites make up the totality of the allocated site, and in combination, propose 35 homes. A 25% provision of affordable homes would equate to 9 dwellings (8.75% rounded up).
7. Outline planning permission has already been granted for the site subject of Appeal B, and it is a condition of that permission that 30% affordable housing be provided on that site. The refusal of reserved matters which is the subject of Appeal B is pursuant to that outline permission. The 30% affordable housing provision was based on the Council's Affordable Housing Supplementary Planning Document requirement, which has since been replaced by the adopted LP, along with the Community Infrastructure Levy (CIL) charging schedule.
8. It is proposed to provide 6 affordable homes on the site subject of Appeal B (which complies with the outline permission) and 3 affordable homes on the site subject of Appeal A, making 9 in total, which when looked at together, is compliant with the 25% affordable housing target of Policy DA5.
9. However, this allocation does not provide the sites subject of Appeal A with the 25% provision sought by the policy. Looked at individually, the site subject of Appeal A should provide 4 affordable houses, whilst the site subject of Appeal B should provide 6 houses, illustrated in the table below.

|          | No of dwellings | 25% | 30% | Proposed | Under/over provision |
|----------|-----------------|-----|-----|----------|----------------------|
| Appeal A | 15              | 4   | N/A | 3        | -1                   |
| Appeal B | 20              | N/A | 6   | 6        | 0                    |

10. If the total number of affordable houses to be provided is the same as the number required by the current policy, it is tempting to say that there would be no planning harm. However, the site subject of Appeal B benefits from the less onerous planning requirements of the now superseded planning policies, and is not required to make CIL payments or to provide 1 dwelling for custom building as would be the case under the new policies. Thus, it is not appropriate to look at the totality of the two sites when the considerations relating to them are different. Clearly, if the two proposals were full applications, it would be appropriate to apply the 25% level of provision across both sites, along with the custom-build housing requirement and CIL contributions that would be payable. It is not appropriate to “mix and match” the two policy regimes, and these arguments are material considerations of substance which justify not applying the LP policy to the site overall. Accordingly, the proposal subject of Appeal A needs to be assessed wholly independently of that of Appeal B.
11. Other than seeking to combine the LP policy requirements of the two sites, the appellants have not put forward any reasons why the full LP policy requirement should not be provided, or to suggest that the scheme would be unviable with such a level of provision, and therefore I find that the full 25% proportion of affordable housing needs to be provided. The offer of only 3 affordable dwellings on this site is deficient, and because of the local and national imperative to meet where possible the housing needs of the area, which the text to the LP indicates is expected to amount to about 40% of the overall housing need, I consider that the deficiency carries significant weight in the planning balance.
12. Moreover, a further difficulty presented by the proposals is that they are separate proposals, and there is no mechanism within the submitted planning obligation to link them. Thus, if allowed, the scheme permitted by Appeal A could go ahead with an under-provision of affordable housing, and there is nothing to compel that under-provision to be addressed in the scheme subject of Appeal B. That permission may not be implemented at all. If a further application were to be submitted in respect of the site subject of Appeal B it would need to be assessed in accordance with the current policy, as there could be no lawful means of requiring one site to make up a shortfall on another site. I appreciate that the likelihood of this happening, given the benefits that would arise from implementing the outline permission, is not great, but it adds to my reasons for finding against the proposal subject of Appeal A.
13. I therefore find that the proposal subject of Appeal A would fail to secure a satisfactory level of affordable housing, and would conflict with LP Policy WE2.

#### *Open space*

14. An area of open space is proposed to be provided in a position which relates reasonably well to both schemes. LP Policy WE11 deals with green infrastructure and requires residential development to provide at least 10 square metres per dwelling of children’s’ and young persons’ play space plus any specific requirements set out in a site allocation policy. The policy also

provides broad guidance about the nature of open space to be provided, but it does set out detailed criteria.

15. Whilst there is no argument about the amount of space to be provided, the Council is concerned about its quality. The space would be bordered on 2 sides by an access road and on another by drives and car parking. The Council's Environment and Leisure team has produced a guidance note for *Formal Equipped Children's Play Area (0-12 Years) LEAP Style Provisions*. Whilst the note promotes the use of a buffer between play areas and residential properties, it does not seek a buffer around play areas which border a road or parking area. However it does require that they shall have a safe boundary and separation from adjacent sources of risk such as roads and SuDS features.
16. It is proposed to separate most of the play area from the drive to the north and the parking spaces to the east by a hedge, but the boundary to the footpath and road is indicated as being open. However a fence could be provided, which would prevent children from running out into the road, and I consider that this, together with the footway, would provide the safe boundary and separation that the guidance note seeks. Cars associated with twelve houses would pass the play space, but the number of movements associated with such a limited number of dwellings would not be great. I therefore consider that a buffer as suggested by the Council would not be necessary, and that the quality of the play space would be satisfactory.
17. The play area would be well located, being accessible to all, and it would be clearly overlooked by the houses on the western side of the space, and to some extent by those on the eastern side, and would otherwise comply with the Council's guidance note.
18. I therefore conclude on this issue that the proposal would provide satisfactory play space and would not conflict with LP Policy WE11 or Policy S2, which deals with design.

#### *Inclusivity*

19. LP Policy WE4 promotes inclusive mixed communities, and to this end requires affordable and market housing on a site to be, as far as practicable, visually indistinguishable from each other in quality, whilst allowing for buildings to be individual and have character. It also says that affordable and market dwellings should be intermixed within the site, avoiding concentrations of affordable housing in any part of the site.
20. The proposed affordable housing in the case of Appeal A would be provided in a terrace of three 2 bedroom houses, with parking provided in a courtyard opposite. The surrounding houses are all detached houses with separate garages, except for a pair of semi-detached houses immediately to the north of the affordable houses. In a development of only 15 houses, I consider a group of 3 dwellings would not amount to a "concentration"; the houses would be reasonably related to the rest of the dwellings on the site, and would be in line and closely related to the houses on Plots 19 and 20.
21. The design of the houses is similar to the open market houses. However, they are smaller than the rest of the other dwellings, having only 2 bedrooms, whilst the rest of the houses would have 3, 4 or 5 bedrooms. Taking the number of bedrooms into account, I consider that the houses would not be

disproportionately smaller than the open market houses. The plot sizes would be smaller than those of the open market housing, particularly in the case of Plot 22 which would be markedly smaller, but again, the smaller sizes are commensurate with the smaller size of the properties.

22. Policy WE4 does not require the two types of houses to be identical – only indistinguishable in terms of quality, and only as far as practicable. The quality of the homes would be identical in terms of design. I consider that the provision of separate garages is an expensive and inessential feature of new dwellings. Moreover, affordable housing subject of Appeal B has 6 dwellings in a row, all with courtyard parking, and no garages. Whilst the Council has refused that proposal on other grounds, it has not cited a reason in respect of inclusive communities, and therefore it must be assumed that it is content with this aspect of the proposal.
23. It is important for local planning authorities to act in a consistent manner in dealing with like proposals, and the acceptance of the Appeal B layout reinforces my view that the proposal in this case would be satisfactory. I therefore conclude on the second main issue that the proposals would adequately address the need to promote inclusive communities and would not conflict with LP Policy WE4, or Policy S2 which deals with design.

## **Appeal B**

### *Character and appearance*

24. The proposal would provide 8 different house types (including variations of the Raglan house type where render is proposed on some parts of the front elevation), which, whilst possessing shared design features, would incorporate variety. Whilst these house types may have been used elsewhere, I consider that as an extension of a relatively modern part of Holcombe which has no distinctive architecture which it is important to reflect, I consider that the standard of design would be good.
25. As important as the design of the houses is the layout, which would be varied. The road into the site would follow a line shaped a little like a question mark, with a mixture of houses fronting the road and with 7 houses served from shared private drives. I consider that this, together with the landscaping proposed, would provide an interesting mix which would contribute to high quality design.
26. The dwellings proposed would be finished mainly in brick, whereas those subject of Appeal A would be mainly rendered. The majority of the dwellings along Holcombe Road in the vicinity of the access into the site are 20<sup>th</sup> century bungalows and chalet bungalows finished in render. They are, in the main, pleasant to look at, but lack any local distinction. The historic core of Holcombe contains mainly rendered buildings but beyond it, such as along Fordens Lane, there is greater variety of built form, and brick is more widely used.
27. Little Leigh, a large bungalow at the entrance of the site is faced in brick, as is the flank wall of the New Coach House, a two storey house which abuts the southern boundary of Little Leigh's front garden, and is clearly visible from the site entrance. There are other dwellings to both the north and south of the site access which are also wholly or mainly faced in brick. Brick is also extensively

used in nearby walls, plinths and on drives. To the east of the site are other brick built dwellings.

28. The proposed dwellings would occupy a backland site which would not have a strong relationship with the Holcombe Road street scene, and where views into the site from the public domain would be limited. The houses would be at a lower level than, and well set back from, the road, with the brick bungalow of Little Leigh in between. The proposed development would have its own sense of identity, and I see no need to replicate slavishly the materials of nearby bungalows.
29. Even so, the preponderance of brick with few architectural features to break up the monotony, would appear particularly stark, and would largely ignore the prevalent use of render in both the historic and more modern parts of Holcombe. The changes in levels within the site would make the use of brick appear even more dominant when seen on the approach into the site. I consider that the almost ubiquitous use of brick would not pay sufficient respect to the more mixed context of the area, and would appear somewhat alien.
30. The appellant has suggested that if I were so minded, I might impose a condition to require that alternative materials be used. I consider that at least a third of the houses should include some predominant finishing material other than brick, and this would ensure that the development would pay adequate regard to the site's context.
31. I therefore conclude on this issue that, subject to the imposition of an appropriate condition, the proposal would not harm the character or appearance of the area or conflict with LP Policy S2 which deals with design.

### **Other matters**

32. Local residents have raised concerns about the principle of both developments, but in respect of Appeal B, this has been resolved through the grant of outline planning permission, and in respect of Appeal A, the principle of the proposal is compliant with a recently adopted development plan policy which promotes the development of the site, and which would have taken into account the limitations of the road network, infrastructure, facilities and landscape impacts.
33. Whilst the height of the houses would be greater than the bungalows on Holcombe Road, they would be far enough away not to appear out of keeping. Although two storey dwellings would have a greater impact on longer-distance views than would bungalows, they would not harm important vistas and would relate satisfactorily to the two storey houses at the end of Channel View Lane.
34. I have also taken account of concerns about highway safety, noise and disturbance and overlooking, but none of these is of sufficient substance to add to my reasons for dismissing Appeal A, or to alter my conclusion in respect of Appeal B.

### **Obligation**

35. On the basis of the evidence before me, the planning obligation offered in respect of Appeal A appears to be necessary and otherwise fulfils the tests set out in the National Planning Policy Framework and the Planning Practice

Guidance. However it does not overcome the harm that I have identified, and does not alter my conclusion.

### **Conditions**

36. The Council has suggested conditions in respect of both appeals, but it is only necessary for me to consider those suggested in respect of Appeal B. A condition to require the development to be carried out in accordance with the approved plans is needed to ensure certainty. A condition relating to landscaping is needed in the interests of appearance, although I have omitted the requirement to seek the approval of the Council's arboricultural officer before trees are planted, as I find this to be unduly onerous. Further details of drainage are needed to ensure that the site is suitably drained and managed.
37. As referred to above, I have required further details of materials to be submitted, although I have restricted this to requiring that at least one third of the dwellings be finished in materials that are not predominantly brick, in order to give some degree of precision as to the changes that I consider are necessary. Further details of architectural features are also needed in the interests of appearance. Parking and garaging are required to be provided in the interests of both appearance and highway safety. The removal of permitted development rights for Plot 25 is justified in order to protect neighbours' living conditions.

### **Conclusion**

38. In respect of Appeal A, I find that although the proposal would provide satisfactory open space and adequately promote inclusive communities, this is outweighed by the harm that I have found in respect of the provision of affordable housing. I consider that the proposal would conflict with the development plan as a whole, and that for the reasons given above, the appeal should be dismissed.
39. In respect of Appeal B, I find that, subject to the imposition of conditions, the proposal would not result in material harm to character and appearance and should be allowed.

*JP Roberts*

INSPECTOR

## **ANNEX**

### **Conditions in respect of Appeal B**

- 1) Other than to accord with conditions of this permission, the development hereby permitted shall be carried out in accordance with the application form and the following approved plans/documents:

*Received on 11 August 2016*

Drawing number ATR-101 Rev C (Swept Path Analysis)

Drawing number PHL-100 Rev E (Preliminary Highway Layout)

Drawing number PHL-102 Rev E (Preliminary Highway Layout)

Drawing number RS.01-01 Rev B (Refuse Strategy Phase 1)

Drawing number SL.01-01 Rev C (Site Layout – Phase 1)

Drawing number SS.01-01 Rev C (Site Sections – South Parcel Phase 1)

Drawing number 265-16-LD-01 Rev E (Soft Landscape Typologies –Phase 1)

Drawing number 265-16-LD-02 Rev F (Hard Landscape Typologies – Phase 1)

Drawing number 265-16-PP-01 Rev D (Planting Plan – Phase 1)

Drawing number PDL-100 Rev D (Preliminary Drainage Layout)

Drawing number ML.01-01 Rev B (Materials Layout)

Drawing number CSL.01-01 Rev C (Site Layout – Phase 1 colour)

Drawing number AHL.01-01 Rev B (Affordable Housing Layout – Phase 1)

Drawing number HT.2B.pe1 Rev B (2 Bed House – Plans and Elevations)

*Received on 2 August 2016*

Flood Risk and Drainage Technical Note

*Received on 28 July 2016*

Drawing number HT.3B.pe Rev A (3 Bed House Plans & Elevations)

Drawing number HT.1B.pe Rev A (1 Bed Maisonette Plans & Elevations)

*Received on 25 July 2016*

Drawing number SL.02 (Site Layout – Plot 25)

Received on 22 June 2016

Drawing number SS.01-02 Rev A (Site Sections – South Parcel Phase 1)

*Received on 14 June 2016*

Drawing number PHL-01 Rev D (Preliminary Site Access Plan)

*Received on 3 May 2016*

Drawing number 04132 TPP (Tree Protection Plan)

Drawing number 04132 TCP Rev B (Tree Constraints Plan)

Drawing number PHL-101 Rev A (Preliminary Road Profile)

Drawing number ESL.01-01 (Existing Site Layout – Phase 1)

Drawing number HT.ALL.e1 (Allington Elevations – Variation: Brick)  
Drawing number HT.ALL.p1 (Allington Floor Plans)  
Drawing number HT.ALL.p2 (Allington Floor Plans)  
Drawing number HT.RAG.e1 (Raglan Elevations)  
Drawing number HT.RAG.e2 (Raglan Elevations – Variation: Render)  
Drawing number HT.RAG.-A.e (Raglan Elevations – Variation: A)  
Drawing number HT.RAG-A.p (Raglan Floor Plans – Variation: A)  
Drawing number HT.RAG-p1 (Raglan Floor Plans)  
Drawing number HT.WAL.e1 (Walden Elevations) Drawing number HT.WAL.p1 (Walden Floor Plans)  
Drawing number HT.WES.pe (Weston Plans & Elevations)  
Drawing number HT.GAR-A.pe (Garage Type A Plans & Elevations)  
Drawing number HT.GAR-B.pe (Garage Type B Plans & Elevations)  
Drawing number LP.01-01 (Site Location Plan – Phase 1)  
Document reference Design Compliance Statement  
Document reference Utilities Technical Note  
Document reference Transportation Technical Note  
Document reference Ecological Impact Assessment

- 2) All new trees are to be container grown. Any trees delivered to site or planted must comply with the British Standard Trees: from nursery to independence in the landscape – Recommendations BS 8545:2014. If any trees planted as part of the approved landscape plan within a period of five years from planting are removed, dies or become seriously damaged/diseased it/they shall be replaced in the next planting season with one of similar size, species and nursery stock, unless the Local Planning Authority gives written consent to any variation.
- 3) Further to condition 8 attached to the outline consent reference 12/03427/MAJ, prior to the commencement of development, details of the maintenance (including details of management) of the approved drainage scheme shall be submitted to and approved in writing by the Local Planning Authority. The drainage scheme shall be maintained and managed in accordance with the approved details.
- 4) Notwithstanding the approved plans, details and/or samples of the materials to be used in the construction of the external surfaces of the dwellings and garages hereby permitted shall be submitted to and approved in writing by the Local Planning Authority prior to their installation. The submitted details shall provide that at least one third of the dwellings are finished in a material that is not predominantly brick. Development shall be carried out in accordance with the approved details.
- 5) Details of all external architectural features including eaves, verges, doors, garage doors, windows, rainwater goods, meter boxes, and rooflights shall have been submitted to and approved in writing by the Local Planning Authority prior to construction of the dwellings hereby approved above damp

proof course level. The development shall be implemented in accordance with the approved details.

- 6) The car parking spaces and garaging shown on the approved plans shall be provided prior to the occupation of the dwelling to which they relate and shall thereafter be permanently retained for parking.
- 7) The affordable dwellings hereby approved (apart from the 1st floor flat) shall comply with the requirements of M4(2) of the Building Regulations (Accessible and Adaptable Dwellings).
- 8) Notwithstanding the provisions of Article 3 of the Town and Country Planning (General Permitted Development) Order 2015 (and any Order revoking and re-enacting this Order), in respect of plot number 25 only, no development under Part 1, Class A (extensions and alterations) of Schedule 2 shall be undertaken without the express consent in writing of the Local Planning Authority other than those expressly authorised by this permission.