

Appeal Decision

Site visit made on 28 February 2017

by Rory Cridland LLB (Hons), Solicitor

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

Decision date: 13 April 2017

Appeal Ref: APP/U1105/W/16/3164631

Main Yard, Lodge Trading Estate, Broadclyst, Devon EX5 3DY

- 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 Richard Holman, AEI Online Ltd against the decision of East Devon District Council.
 - The application Ref 16/0263/MOUT, dated 1 February 2016, was refused by notice dated 14 June 2016.
 - The development proposed is residential development 44 dwellings.
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Decision

1. The appeal is dismissed.

Preliminary matters

2. The description of development in the heading above has been taken from the planning application form. However, in Part E of the appeal form it is stated that the description of development has not changed but, nevertheless, a different wording has been entered. Neither of the main parties has provided written confirmation that a revised description of development has been agreed. Accordingly, I have used the one given on the original application.
3. The Council's fifth and sixth reasons for refusal relate to the absence of a legal agreement in respect of contributions towards affordable housing, open space, secondary school education and habitat mitigation for the East Devon Pebblebed Heaths and Exe Estuary protected sites. However, within its written evidence, the Council has confirmed that following its adoption of a new Community Infrastructure Levy charging schedule, it wishes to withdraw these refusal reasons other than where they relate to affordable housing provision. On the basis of the submitted evidence, I have no reason to disagree with the Council's approach in respect of this matter. Accordingly, I have not considered these matters in my reasoning below.
4. The application was submitted in outline, with matters relating to appearance and landscaping reserved. I have dealt with the appeal on that basis, treating all plans as illustrative, except where they deal with matters of scale, layout and access.

Main Issues

5. The main issues are:
 - (i) whether the site offers an acceptable location for the proposed development, having regard to its accessibility to local facilities;
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- (ii) the effect of the proposed development on highway safety, with particular regard to pedestrian safety, increased traffic and visibility;
- (iii) whether the proposal makes adequate provision for surface water drainage; and
- (iv) whether the proposal makes adequate provision for affordable housing.

Reasons

Location

6. The appeal site is located to the east of Lodge Trading Estate which consists of a collection of class B units situated between the village of Broadclyst and the Airport. The site's southern boundary is bordered by a railway line which divides the site from nearby Cranbrook, a 'new town' intended to comprise up to 3500 dwellings. The Council recognises that Cranbrook will continue to expand over the plan period and will develop into an important service centre which acts as a self-contained town serving the surrounding area. The southern part of the site previously benefitted from outline planning permission for the construction of an additional 10 units falling within a B1 and B8 use class (the "Previous Permission")¹, but which I understand is no longer extant.
7. Strategy 7 of the East Devon Local Plan 2013 to 2031 (LP)² restricts development within the countryside other in a limited number of circumstances. These include where it is in accordance with a specific Local or Neighbourhood Plan policy that explicitly permits such development and where it would not harm the distinctive landscape, amenity and environmental qualities of the area within which it is located. It defines the countryside as all those parts of the plan area which are outside the Built-up Area Boundaries and outside of site specific allocations shown on the proposals maps.
8. The appeal site is located outside the Built-up Area Boundary and does not form part of any site specific allocation. While I note that LP Strategy 12 identifies sites allocated for development in and around Cranbrook by reference to the West End Inset Map ("the Inset Map"), it is clear that the appeal site falls outside the defined land allocations for the expansion of Cranbrook. While I note that the site does fall within the defined Cranbrook Plan Area (CPA), this designation covers large areas of land around Cranbrook and I accept is not intended to define a Built-up Area Boundary. Furthermore, inclusion within the CPA does not indicate that development is acceptable. Instead, the CPA merely defines the geographical area that the emerging Development Plan Document for Cranbrook is intended to cover. As such, I find the fact that the land falls within the intended geographical boundary to be of little assistance and conclude that the site falls to be classed as part of the countryside for planning purposes.
9. I have not been directed to any other Local or Neighbourhood Plan policy which would permit development in this location and, in the absence of such, find that the proposal would be contrary to LP Strategy 7.

¹ Ref 12/1515/MOUT

² Adopted 28 January 2016

10. The Council has also raised concerns regarding the site's distance from local services suggesting that its location would rely heavily on the use of the private car. I agree with that assessment. The appeal site is situated around 1km from Broadclyst, adjacent to the area identified in the Inset Map as part of the Cranbrook Expansion Area. Travel from the appeal site to both Broadclyst and Cranbrook along the existing road network would, at present, involve navigating along generally narrow, unlit roads with limited pedestrian footways (a matter to which I return below). This would discourage more sustainable modes of transportation such as walking or cycling. Furthermore, with limited public transport opportunities currently in existence and little certainty that a bus service operator would include the site within an existing route, there is every indication that future occupiers of the site would rely heavily on the private car. This would be contrary to LP Policy TC2 which requires new development to be accessible by pedestrians, cyclists and public transport users and to minimise the need to travel by car.
11. The appellant has sought to address this by proposing a new footbridge over the railway which would provide a pedestrian/cycle link to Cranbrook station as well as the other services available nearby. While I accept that this would provide partial mitigation, it would not in my view overcome the harm identified above. Furthermore, from the evidence submitted, it seems that while initial discussions between the appellant and Network Rail have taken place, they are not particularly advanced. No agreement has been reached and there is limited information as to its overall viability. In the absence of any robust evidence to demonstrate that it would be deliverable, the weight that I can afford it is limited.
12. The Council has also identified other LP Strategies in its reasons for refusal which it considers the development would be in conflict with, including Strategies 6 and 12. However, these policies relate to development inside the Built-up Area Boundaries. As I have found above that the appeal site is located outside any recognised Built-up Area Boundary, I do not consider them to be determinative for the purposes of this appeal. Furthermore, while I note the reference to LP Strategy 1, it is clear that the intention is for the West End to accommodate significant residential development over the plan period and I find no conflict between the proposal and that Strategy in this respect.
13. Consequently, although I have found no conflict with LP Strategies 1, 6 and 12, I have nevertheless found that the appeal site would fall outside a recognised Built-up Area Boundary and, as such, would be contrary to LP Strategy 7 which limits new development in the countryside other than in a number of defined circumstances. In addition, in view of its limited transport links, poor pedestrian facilities and limited accessibility, it would be contrary to LP Strategy 5B and LP Policy TC2 which seek to promote and secure sustainable modes of transport and ensure that new development is located so as to be accessible by a range of users.

Highway Safety

14. LP Policy TC7 restricts planning permission for development where the proposed access, or the traffic generated by the development, would be detrimental to the safe and satisfactory operation of the local or wider highway network. This accords with the guidance set out in Paragraph 32 of the National Planning Policy Framework ("the Framework") which, amongst other things,

advises that decisions should take account of whether opportunities for sustainable transport modes have been taken up and whether safe and suitable access to the site can be achieved for all people.

15. The proposal would utilise the existing access to the trading estate, which at present contains neither footways nor street lighting. The Council has raised concerns regarding the increase in residential and pedestrian traffic on a road lacking pedestrian footways which is used by a high number of commercial vehicles. I agree with those concerns. The appellant has provided a Transport Assessment (TA) which indicates that there would be around 296 additional two-way movements over a 12 hour period utilising the access road. Although I note that this document is now somewhat out of date, it is clear that the proposed scheme would introduce a considerable amount of additional, residential traffic to both the access road and the surrounding highway network. This would substantially add to the existing commercial traffic using these roads, many of which will be Heavy Goods Vehicles (HGV's).
16. While I note that the TA concludes that the impact would be no greater than that which would have been expected under the Previous Permission, it also recognises that the type of traffic likely to be generated by the proposal would be somewhat different to that which would be generated by an increase in the number of industrial units on the trading estate. While I accept that any increase would involve smaller vehicles than would be the case for the Previous Permission, it would nevertheless considerably increase the number of cars and pedestrians using these routes. Traffic on these roads already includes HGV's seeking access to the trading estate, creating a clear potential for conflict and detrimentally impacting on highway safety along this route.
17. Furthermore, as both the TA and the TP recognise, current pedestrian infrastructure in the vicinity of the site provides limited opportunities for access to the wider pedestrian network. No improvements are proposed to the pedestrian facilities along Station Road and, while I note the appellant's proposed improvements to the access road, these only provide partial mitigation. Walkers and cyclist seeking to access Broadclyst and the wider area would need to negotiate narrow, poorly lit roads with limited footways, stretches of limited visibility and along which there was both commercial and residential traffic. While I note the proposed mitigation measures included in the appellants Travel Plan, that document focuses heavily on encouraging the use of the proposed footbridge, which I have already found may not be deliverable and to which I attach limited weight.
18. Accordingly, in view of the limited pedestrian links available and the considerable increase in residential traffic which would be generated, I consider the development would result in a significant deterioration in highway safety along both the proposed access and nearby Station Road. This would be detrimental to the safe operation of the local highway network.
19. The Council has also raised concerns regarding the visibility at the junction with Station Road and the impact that additional traffic flows would have on highway safety. However, I observed on site that when exiting the access road, visibility to the left was generally good with low level hedging and clear views of traffic travelling towards the junction from that direction. Similarly, while I noted that visibility to the right was slightly obscured, I noted that it was possible to navigate the junction safely without any sense of danger and

without employing any greater degree of caution than could be expected of a reasonably competent driver. Likewise, when travelling along Station Road in both directions, I noted that the junction was clearly visible on the approach and that vehicles seeking to exit would be seen in good time for a reasonably cautious driver to take appropriate action. In the absence of any detailed data which would indicate that safety at the junction was already compromised, I do not agree that any existing deficiencies in visibility would be materially detrimental to highway safety.

20. Consequently, while I have found that visibility at the junction with Station Road would not be inadequate, I have nevertheless found that the proposal would result in a significant deterioration in highway safety along both the proposed access and nearby Station Road. As such, it would be contrary to Policy TC7. It would also be contrary to the guidance set out in Paragraph 32 of the Framework.

Drainage

21. LP Policy EN22 requires the surface water run-off implications of new development to have been fully considered and found to be acceptable, with appropriate mitigation measures being included as an integral part of all new development. Furthermore, it requires a Drainage Impact Assessment for all new development likely to generate significant surface water run-off and seeks to ensure that surface water in schemes of 10 homes or more should be managed by sustainable drainage systems unless demonstrated to be inappropriate.
22. The Council is concerned that there is insufficient information in respect of the disposal and management of surface water to fully assess whether the risks posed could be sufficiently mitigated by means of a sustainable drainage system. I agree with those concerns. While I note the flood risk assessment provided by the appellant indicates that the site is suitable for development as a trading estate, there is a paucity of information as to its suitability for residential use or regarding surface water run-off. While I note that the appellant has suggested that these details can be worked out at reserved matters stage, in the absence of any specific details as to what the surface water run-off implications would be, or the measures that will be put in place to mitigate any risks, I cannot be certain that any adverse impacts could be brought within acceptable levels. As such, I am not persuaded that this is a matter that can adequately be dealt with as part of the reserved matters and do not consider a condition would adequately guard against the potential risks posed.

23. Accordingly, I find the proposal would be contrary to LP Policy EN22.

Affordable housing

24. LP Strategy 34 requires the provision of affordable homes on residential developments according to their location, applying a 25% requirement within defined areas, including major strategic West End development sites. These include nearby Cranbrook and are defined by the Built-up Area Boundary as shown on the Inset Map. Outside these defined areas, it applies a higher level, requiring 50% to be affordable subject to viability considerations. Where a proposal does not meet these targets, it will be necessary to submit evidence to demonstrate why provision is not viable or otherwise appropriate..

25. I have found above that the site falls outside any defined built-up area boundary. As such, it would attract an affordable housing contribution at the higher level. Although the appellant has provided a viability assessment dated 9 June 2014 which indicates that the provision of affordable housing would not be viable, both the report itself and the information it is based on are now considerably out of date. In the absence of any secured affordable housing provision or up to date information which would demonstrate that a lower level of affordable housing would be justified on this site, I cannot be satisfied that the proposal would comply with the requirements of the LP. As such, I find it contrary to LP Strategy 34.

Other matters

26. While I note the appellant contends that the site should be regarded as previously developed land, I noted that the site itself is not occupied by any permanent structures or visible fixed surface infrastructure which would indicate that the site would fall within such a definition.

27. In reaching my conclusions, I have noted the comments of the Landowner which were submitted as part of this appeal. While I note the concerns regarding the manner in which the application was progressed, these are not matters which would affect the outcome of this appeal. Likewise, while I note the views expressed on the Council's ability to deliver its strategic house-building objectives, I have seen no robust evidence that would indicate that there was a persistent under delivery of housing or that the Council was unable to identify a 5 year supply of deliverable housing land. Nevertheless, even were I to conclude that this were the case, I consider the harm identified above would significantly and demonstrably outweigh the benefits of the proposed scheme.

Conclusion

28. For the reasons set out above, I conclude that the appeal should be dismissed.

Rory Cridland

INSPECTOR