
Appeal Decision

Site visit made on 10 April 2017

by Thomas Bristow BA MSc MRTPI

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

Decision date: 8 May 2017

Appeal Ref: APP/X1118/W/16/3161403

Homelands, road from Red Post Cross to Balls Corner, Burrington EX37 9JH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 as amended against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Gouldman Farms Ltd. against North Devon District Council.
 - The application Ref 61396 is dated 20 June 2016.
 - The development proposed is described in the application form as 'proposed residential development for 2 open market dwellings and access and parking for Homelands'.
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Decision

1. The appeal is allowed and planning permission is granted for 2 open market dwellings and access and parking for the dwelling Homelands at Homelands, road from Red Post Cross to Balls Corner, Burrington EX37 9JH in accordance with the terms of the application Ref 61396, dated 20 June 2016, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 14089/LG1, 14089/P3B and 14069/PG1F.

Application for costs

2. An application for costs was made by Gouldman Farms Ltd. against North Devon District Council which is the subject of a separate decision.

Preliminary matters

3. The Council's decision notice is dated 2 November 2016, however the appeal was made on 20 October 2016 and is therefore in relation to the Council's failure to determine the application within the relevant statutory period.
4. I have determined the proposal to which this appeal relates in accordance with the development plan unless material considerations indicate otherwise.¹ I will subsequently consider the weight to accord to other material considerations.

¹ Pursuant to Section 38(6) of the Planning and Compulsory Purchase Act 2004.

5. Notwithstanding the emerging North Devon and Torridge Local Plan 2011-2031, the development plan for North Devon presently comprises saved policies of the North Devon Local Plan adopted originally in July 2006 (the 'Local Plan').

Main issue

6. The main issue is whether or not the harm arising from the absence of a financial contribution towards off-site open space provision would outweigh the benefits of the development proposed.

Policy context

7. Saved policy REC5 'Public open space' of the Local Plan sets out how the Council will seek to ensure that public open space is provided in connection with development. Criterion 2 of policy REC5 sets out that the type and amount of open space sought will depend on 'the intended occupants of a proposed scheme, the scale of development and the amount and quality of existing and proposed provision in the surrounding area'.²
8. Two documents support the approach in policy REC5 entitled 'Creation and enhancement: the development of an open space strategy for North Devon supplementary planning document' dated 2001 (the 'SPD'), and 'Provision of public open space, sport and recreation code of practice supplementary planning guidance' dated 2004 (the 'SPG'). Whilst neither are part of the development plan, they set out how policy REC5 will operate in practice.
9. The SPD is primarily an evidence-based document which evaluates existing open space provision in the District alongside demographics and community preferences. Based on this information the SPD establishes minimum levels of open space provision that should be available within the District. This provision is then converted in the SPG into requirements for individual proposals based primarily on the number of occupants of dwellings proposed.³
10. The minimum levels of open space provision required are set out in table 1 of the SPG. Whilst the evidence underlying table 1 is based on a detailed study of all areas of the District, the open space requirement is expressed as a general flat-rate level of expected provision.
11. Paragraph 3.1 of the SPG explains that financial contributions towards off-site provision will only be required where the proposal is for 'at least three additional dwellings'. Paragraph 4.14 further clarifies that 'where a proposal forms part of a larger allocation or development site', if the aggregate number of dwellings proposed exceeds 3 a contribution will be sought.
12. The National Planning Policy Framework (the 'Framework') explains that the age of development plan policies is not in itself determinative of their currency.⁴ Paragraph 73 of the Framework highlights the value of high quality open spaces and sets out that development plan policies should be based on 'robust up-to-date assessments' in order to enable a determination as to what

² Criterion 3 of saved policy REC5 specifies that where on-site open space provision is not possible, contributions 'towards the provision of new open space elsewhere' will be sought.

³ With reference to tables 4 and 5 in particular.

⁴ With reference to paragraph 215 of the Framework.

future provision is necessary. The Planning Practice Guidance (the 'Guidance') similarly recognises the value of open space.⁵

13. Therefore the overarching aim of policy REC5 is broadly consistent with the approach in the Framework and the Guidance, although I shall return to the mechanics of how this approach applies to individual developments.

Reasons

14. The appeal site is an irregular parcel of land located centrally within the village of Burrington. It falls between the dwellings named Homelands and South View. Presently the appeal site comprises a consolidated access, gravelled driveway and some open grassed land which I understand is used in connection with Homelands. A large building of utilitarian form is also present.
15. Planning permission Ref 59549, withdrawn on 28 July 2015, proposed the erection of four dwellings (the 'July 2015 application').⁶ The Council subsequently refused permission for application Ref 59781 via decision notice dated 8 October 2015, the proposal there being for the erection of 2 dwellings (the 'October 2015 application').⁷ The October 2015 application site overlapped part of the July 2015 application site.⁸
16. The Council then granted permission for application Ref 59769 via decision notice dated 10 June 2016, which was for the erection of 2 dwellings (the 'June 2016 application').⁹ The June 2016 application site overlapped part of the application site in both the July 2015 and October 2015 applications.¹⁰
17. The appeal site here is the same as the application site in the October 2015 application.¹¹ It therefore overlaps part of the application sites in all other cases identified above. There is no robust evidence before me, such as land registry titles, to indicate that the appeal site is not wholly or partially under joint ownership with the owner(s) of the application sites in previous applications.
18. I would also note that on plan 14089/PP1E supporting the June 2016 application, the dwellings proposed in that case were identified as falling within 'plots 1 and 2'. The dwellings now proposed appear to be annotated as within plots 3 and 4 on plan 14089/PG1F. The dwellings now proposed are annotated on plan 14089/PG1F as being 'type B', with the same internal dimensions and layout as the 'type B' dwellings proposed in the July 2015 application.¹²
19. Moreover the overlapping land in this appeal site and the application site in the June 2016 application relates to vehicular access and turning space. In order to implement the June 2016 permission and the appeal proposal, the occupants of

⁵ Reference ID: 37-001-20140306.

⁶ The application made by Mr Graham Short, with the application site as illustrated on supporting plan 14089/L1.

⁷ The application made by Mr Tim Short.

⁸ As illustrated on supporting plan 14089/LG1.

⁹ The application made by Mr Graham Short.

¹⁰ As illustrated on supporting plans 14089/L1 and 14089/PP1E.

¹¹ The application was originally made by Mr Time Short (sic), notwithstanding the reference to the appellant being Mr Graham Short within the appeal form. However correspondence from the agent acting on behalf of the appellant dated 26 April 2017 clarifies that the application and appeal were made on behalf of Gouldman Farms Ltd. The appeal site is illustrated on supporting plans 14089/LG1 and 14089/PG1F.

¹² As is evident from a comparison of plan 14089/P3A of the July 2015 application and plan 14089/P3B of the current proposal.

the permitted dwellings and those proposed here would all need to use this space. There is no indication that this could not be achieved practically.

20. Taking account of the above factors, it is reasonable to take the position that the proposal here forms part of a larger development site. Therefore, if permitted, the current proposal would result in planning permission for four dwellings within a larger development site. Accordingly, and as no contribution towards off-site public open space has been proposed, the proposal conflicts with the approach in saved policy REC5 of the Local Plan as implemented via the SPG (paragraph 4.14 in particular). I now turn to the weight that can be accorded to the harm arising from this conflict.
21. I have explained above that the overarching aim of saved policy REC5 is broadly consistent with the relevant elements of the Framework and the Guidance. However the SPG and SPD were produced quite some time ago and therefore do not reflect changes in respect of the provision of open space which have occurred since their original production 13 and 16 years ago respectively. I am therefore not satisfied that policy REC5 is based on robust and up-to-date evidence with reference to paragraph 73 of the Framework.
22. The adoption of the Local Plan, the SPD and the SPG furthermore all pre-date changes to the Guidance relating to where financial contributions may legitimately be sought from development.¹³ These changes were made pursuant to the Court of Appeal judgement handed down on 11 May 2016 in Secretary of State for Communities and Local Government v West Berkshire District Council & Anor (the '2016 judgement').¹⁴ The 2016 judgement gave legal effect to the Ministerial Statement of 28 November 2014.¹⁵ The Ministerial Statement is clearly premised on the basis of seeking to avoid disproportionate burdens to housing delivery.
23. Notwithstanding the flexibility accorded to designated rural areas,¹⁶ the Guidance specifies that 'tariff style planning obligations' should generally not be sought from developments of 10 units or less. The Guidance further clarifies that 'tariff-style' obligations must be considered with reference to the policy and statutory tests in relation to obligations,¹⁷ and that 'planning obligations should not be sought to contribute to the pooled funding 'pots' intended to fund the provision of general infrastructure in the wider area'.¹⁸
24. Whilst the approach in the SPD and SPG are based on evidence of the nature of open space provision in particular locations and the demands arising from development, I have established above that the open space requirements for new development are expressed as a generalised flat-rate of expected provision across the District. Moreover table 7 of the SPG sets out what the Council considers to be 'the minimum sizes for different types of open space' for these spaces to be 'viable and functional'.

¹³ Reference ID:23b-031-20161116.

¹⁴ EWCA Civ 441.

¹⁵ Official record Ref HCWS50.

¹⁶ In respect of which no reference has been made by the Council at appeal.

¹⁷ Paragraph 204 of the Framework and Regulation 122 of the Community Infrastructure Regulations 2010.

¹⁸ Guidance Reference ID: 23b-014-20160519, with which the advice given by the Planning Advisory Service appended to the Council's appeal statement is essentially consistent.

25. It is therefore evident that multiple contributions from developments towards open-space provision would generally be needed to achieve the minimum sizes of open spaces as set out in table 7 of the SPG. There is no location-specific list of open space projects which would be funded by contributions sought via policy REC5 before me.
26. Applying the methodology within the SPG, the Council have calculated that the proposal combined with the June 2016 dwellings would result in a total open space requirement of 400 square metres. Based on the Council's standard formula this amounts to a contribution of £17,220.80. However there is no indication before me of the particular open space or spaces that this would fund, rather than it entering into a general pot for such purposes.
27. Based on the information before me I must therefore conclude that the Council's approach to open-space provision as set out in policy REC5 and as supported by the SPD and SPG is effectively a 'tariff-based' approach with reference to relevant elements of the Guidance. I am not satisfied that requiring an obligation towards off-site open space provision in this instance, as the Council have indicated is needed, would be directly related to the development proposed as is required by policy and statute (in the absence of clarity as to which project(s) to which it would relate).
28. I furthermore observed during my site visit that there is a public playground conveniently located at Twitchen Lane nearby, and that various public rights of way are readily accessible close by. In this context, even were a contribution towards open-space provision appropriate in this instance, the harm arising by virtue of its absence to the occupants of the dwellings proposed and others nearby would be highly limited given the prevalence and proximity of publicly accessible formal and informal open space.
29. I have identified above that the approach in saved policy REC5 cannot be said to be supported by robust up-to-date evidence. As applied with reference to the SPD and SPG, saved policy REC5 conflicts with the approach in the Guidance and the Ministerial Statement to tariff-style contributions. I am also not satisfied that an obligation related to open-space provision, as the Council contend is required here on the basis of their calculated sum, would meet the relevant policy and statutory tests.
30. Furthermore on account of the surrounding context of the appeal site I am not of the view that any substantive harm would arise from the absence of a contribution towards open-space provision in connection with the development proposed in conjunction with the June 2016 permission. Therefore whilst the proposal conflicts with saved policy REC5 of the Local Plan, the harm resulting from this conflict would, in my view, be negligible.
31. The Framework sets out that in order to achieve sustainable development economic, social and environmental gains should be sought jointly and simultaneously through the planning system. The proposal would result in the provision of 2 new homes in the District in a location and of a design which the Council consider to be appropriate.
32. The proposal would also entail some social and economic benefits in supporting employment during construction and as future occupants would make use of

local services and facilities. Accordingly, whilst the benefits of the development proposed would be modest, for the above reasons I conclude they are not outweighed by the harm that would result from the absence of a financial contribution towards off-site open space provision.

Other Matters

33. I have taken account of the representations made by nearby residents, including regarding the potential effects of the proposal in respect of sewerage, traffic and pedestrian safety, the character of the area including the Burrington Conservation Area, reducing the outside space available to neighbouring properties and in relation to disruption arising during construction.
34. However there is nothing in the information before me, nor as a result of my site visit observations to conclude that unacceptable effects would arise in respect of these matters on account of the nature of the proposal, its surrounding context, and given that certain controls exist outwith planning (such as in relation to sewerage provision and statutory nuisance). This is consistent with the position of the Council in these respects.
35. The Council contend that the approach in policy REC5 with reference to the SPD and SPG has been supported as valid in other appeals. However there is no robust evidence before me in support of this position, and in any event each proposal must be determined on its particular merits. Accordingly neither this, nor any other matter, is sufficient to outweigh or alter my reasoning above.

Conclusion

36. I have identified that the harm arising from conflict with policy REC5 would be negligible, and accordingly that this harm does not outweigh the benefits of the proposal. Therefore, having taken account of the development plan as a whole, the approach in the Framework, and all other matters raised, I conclude that the appeal should be allowed subject to the conditions as set out above (condition 2 being necessary in the interests of certainty).

Thomas Bristow

INSPECTOR