
Appeal Decision

Hearing held on 22 November 2017

Site visit made on 22 November 2017

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

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

Decision date: 18th December 2017

Appeal Ref: APP/K1128/W/17/3179884

Land at Four Cross, Paignton Road, Stoke Gabriel, Totnes, Devon TQ9 6QB

- 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 LDU Developments LLP against the decision of South Hams District Council.
 - The application Ref 0011/16/OPA, dated 17 December 2015, was refused by notice dated 10 May 2017.
 - The development proposed is residential development of up to 9 dwellings, utilising the existing access point.
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Decision

1. The appeal is allowed and outline planning permission is granted for residential development of up to 9 dwellings, utilising the existing access point on land at Four Cross, Paignton Road, Stoke Gabriel, Totnes, Devon TQ9 6QB in accordance with the terms of the application, Ref 0011/16/OPA, dated 17 December 2015, subject to the conditions set out in the Annex to this decision.

Procedural matters

2. The application is made in outline with all matters reserved for subsequent approval other than access. An indicative layout was submitted with the application which I have taken into account in my decision.
3. A planning obligation under s.106 of the Town and Country Planning Act 1990 was submitted at the hearing. The obligation seeks to provide contributions towards affordable housing, open space and recreation facilities, school transport and highways works. I shall refer to this in more detail below.
4. An amended plan was submitted at the Hearing which showed a minor adjustment of off-site highway works, which the appellants had been in discussion with the Highway Authority about, following points raised by the Parish Council. I consider that this would not amount to a significant change to the proposal, and that no-one would be prejudiced by my considering it.

Main Issues

5. The main issues are:
 - i) whether occupiers of the proposed dwellings would have satisfactory access to services and facilities, and

- ii) the planning balance, having regard to the inability of the Council to demonstrate a 5 year supply of housing land.

Background

6. The site lies not far outside of the Stoke Gabriel Development Boundary as defined in the South Hams Local Plan 1996 (LP). LP Policy CS1 lists a number of towns and villages where it says that development is acceptable in principle, which includes Stoke Gabriel, outside of which it says that development will be strictly controlled and only permitted where it can be delivered sustainably and in response to a demonstrable local need. The site lies outside of the built-up limits of Stoke Gabriel and outside of the development boundary shown in the plan. There has been no demonstrable local need for development, other than for affordable housing, which is not proposed here, although a contribution towards such housing would be made through the planning obligation. The proposal would therefore conflict with Policy CS1.
7. However, the Council acknowledges that its inability to demonstrate a 5 year supply of housing land means that its housing supply policies are out of date, and consequently this limits the weight that can be afforded to the conflict with the policy. I recognise that Stoke Gabriel has seen a number of permissions being granted for residential development in recent years, but having regard to the shortfall in meeting housing targets, I agree with the Council's stance that there can be no objection to the re-development of a brownfield site in this location in principle.
8. Thus, the Council concerns are focussed solely on the accessibility of the site to services and facilities.

Reasons

Accessibility

9. It is proposed to provide a footway from the appeal site to a point on Paignton Road nearer the village where a new footway is proposed as part of the residential development of 53 houses by Cavanna Homes (the "Cavanna site"). In turn that footway would link to the existing footway network providing pedestrian access to the rest of the village.
10. It was accepted by the appellants at the Hearing that the proposal is reliant on the provision of the Cavanna site footway, and that accessibility to the village facilities via Footpath 6 would not be appropriate. At the Hearing, there was some discussion as to whether the Cavanna footway would be provided, as this is outside the control of the appellants. Even so, from what I was told, there is a prospect that it may be provided and therefore I consider that the imposition of a Grampian condition linking the development to the provision of the Cavanna footway would provide a safeguard to ensure that it is provided. I shall refer to the appropriate form of condition below.
11. Stoke Gabriel has only limited facilities and services, and local residents point out that the reality is that most residents will rely on larger supermarkets outside of Stoke Gabriel and will travel there by car. Whilst I recognise that this is likely to be the case with occupiers of the proposed dwellings in this case, Stoke Gabriel is nevertheless identified as a settlement where new

- residential development may take place, and as it has some facilities, including a post office and shop, it can provide for some day to day needs of residents.
12. The Council argues that even with the footpath being provided, the distances to all of the facilities and services with the exception of the bus stop are too far to provide a satisfactory degree of accessibility. There are no current development plan policies on which the Council relies. However, Policy SPT2 of the emerging Joint Plymouth and South West Devon Local Plan (JPSWDLP) seeks to ensure that developments have reasonable access to a vibrant mixed use centre, which meets daily community needs for local services such as neighbourhood shops, health and wellbeing services and community facilities, and includes, where appropriate, dual uses of facilities in community hubs.
 13. The policy explanatory text includes a table of distances which it says are measures that are aspirational, in the sense that they represent sustainability outcomes that are aspired to for an area, but they also represent standards that individual development proposals will be considered against, as part of the overall planning judgment.
 14. The table indicates that distances to a primary school and a shop should be no more than 800m, the policy seeks 800m, whereas the distances involved in this case are 1.1km and 1.2km respectively, well in excess of the aspirational distances of the table.
 15. The JPSWDLP has yet to be examined, and there is an outstanding objection which says that the policy is too restrictive to allow development to come forward. To my mind, that objection is one which could affect whether, or in what way, such aspirational distances are used in the plan. This is an unresolved objection which limits the weight that the policy can be afforded.
 16. The appellants have referred me to other criteria relating to distances. The Chartered Institute of Highways and Transportation in its good practice guidance suggest that 800m is the acceptable distance to walk to services, with a maximum of 2km. All of the village facilities would be well within that maximum distance. Manual for Streets 2 refers to the superseded Planning Policy Statement 13 *Transport* which indicates that trips under 2km offer the greatest potential to replace most car trips. None of these documents has any statutory force, but I attach some weight to them as general statements of good practice.
 17. As well as the distance from the site to services and facilities, the willingness of occupiers to walk to such destinations will also be influenced by other factors. Within the village there are some steep gradients, and owing to the narrowness of the roads within the centre of the village, footpaths are intermittent, and this, in combination with the distances involved may deter walking. The new "Cavanna" footpath would be located behind a bank and hedge, where there would be no passive surveillance by passing cars or nearby houses, and along with an absence of street lighting (something that it is appreciated by local people as contributing to the distinctive rural character of Stoke Gabriel), this may act as a deterrent to use, especially in the dark.
 18. I refer below to the highway aspects of the proposal, and although I conclude that the proposed footway arrangements would be safe, I recognise that the

need to cross the fairly busy Paignton Road may be of concern in particular to parents with children, or those with mobility difficulties, and this may act as a disincentive to their use. I was told of localised flooding that occurs in the dip in Paignton Road just to the south of the site, and, at times, this may also deter use of the footpath.

19. Even taking into account these circumstances, whilst I recognise that accessibility for pedestrians would not be good, and although the matter is finely balanced, I consider that it would be satisfactory, or, as is sought by Policy SPT2, it would provide reasonable accessibility. Those without access to a car would have a realistic alternative to travel to the village on foot, or by bicycle, and even if people chose to drive, the journeys would be short. I therefore conclude on this issue that the proposal would provide satisfactory access to services and facilities, and would not conflict with emerging Policy SPT2.

Planning balance

20. I have indicated above that the proposal would conflict with LP Policy CS1, and that the Council's policies for the supply of housing should be considered to be out of date because of the Council's inability to demonstrate a 5 year supply of housing land. Paragraph 14 of the National Planning Policy Framework says that in such circumstances permission should be granted for development unless the benefits of the proposal are clearly and significantly outweighed by the harm, or unless other policies in the Framework indicate that development should be restricted.
21. There are no such restrictive policies relevant here. I have found that there would be no material harm in terms of accessibility, and there are no other objections of sufficient substance to weigh against the benefits of the proposal in providing new much needed housing, re-using a brownfield site and making contributions towards affordable housing. I therefore find that the balance of arguments falls heavily in favour of the proposal, and that permission should be granted.

Other matters

22. Notwithstanding the amended footway plan submitted by the appellants, local residents and councillors expressed concerns about the safety of providing a crossing point in the location proposed. However, having regard to the visibility obtainable at that point, and the likelihood that the presence of a footway would mark a change in the character of the road, and would be likely to slow traffic, I share the Highway Authority's view that it would be safe.
23. Local residents and the Parish Council also expressed concerns about the effect of the proposal on Greater Horseshoe bats, a protected European species. The ecological survey submitted with the application indicated that no bats roost on the site. The site is however just within the sustenance zone identified in relation to the Berry Head to Sharknam Point Site of Special Scientific Interest, which is a designated Special Area of conservation (SAC) where it is required that development should not have a significant adverse effect on the integrity of the SAC. Natural England, the Government's statutory adviser on the natural environment, said in its letter of 17 March 2017 that the proposal is

unlikely to affect any statutorily protected sites. As the SAC is such a site, I am confident that the effect on the SSSI has been taken into account, and this, together with the appellants' ecological assessment satisfies me that the proposal would not have an adverse effect on the integrity of the SAC, a view shared by the Council.

24. The Council's drainage consultees had no objection to the proposal, and I consider that this matter can be adequately addressed by the imposition of conditions.
25. I have had regard to concerns that this proposal could give rise to further development of adjoining land, but any such proposals, and their implications for affordable housing, would need to be assessed on their own merits at the time.

Conditions and obligation

26. A number of conditions were agreed in the Statement of Common Ground and I have assessed them in the light of national guidance and the discussion which took place at the Hearing. I have amended the wording of the suggested conditions, where necessary, in the interests of precision, conciseness or enforceability.
27. A condition to require the access to be carried out in accordance with the approved plan is needed to ensure certainty. The implementation of the measures recommended in the appellants' Landscape and Ecological Management Plan is necessary to promote biodiversity. A condition restricting the number of dwellings to nine is unnecessary because the proposal specifically identifies the number of dwellings to be provided and a greater number could not lawfully be approved as a reserved matter.
28. Conditions relating to surface and foul drainage are required to ensure that the site is satisfactorily drained. Conditions dealing with lighting and landscaping are needed in the interests of appearance. Conditions relating to the provision of parking, cycle parking and the provision of pedestrian and vehicular access are needed to ensure that occupiers can readily walk to the village and in the interests of highway safety.
29. The main parties agreed that the provision of the Cavanna footpath was needed, but there was disagreement as to whether it should be provided prior to development taking place or prior to first occupation of the dwellings. I consider that the provision of the footpath is essential to ensure that occupiers could walk to the village and that those without access to a car would not be isolated. As the construction of the footpath is not in the appellants' control, and without doubting the appellants' intentions in this case, I consider it essential that the footpath be provided prior to development taking place to avoid the prospect of the Council having to decide on a future application to allow occupation of the completed houses in the event that the footpath were not provided. This would not amount to good planning. I therefore consider that the Cavanna footpath should be provided prior to the commencement of development.

30. Conditions requiring the submission and implementation of a construction management statement are needed to protect the living conditions of nearby residents and in the interests of highway safety. A condition to address unexpected ground contamination is required to protect the health and safety of occupiers and those working on the site.
31. A condition restricting the number of dwelling to be built to no more than nine is unnecessary because the application specifies the maximum number of dwellings proposed and a reserved matters application could not lawfully exceed that number.
32. On the basis of the information before me I consider that the obligation dealing with affordable housing, open space and recreation facilities, education transport and highways works is justified by relevant development plan policies and Supplementary Planning Document (SPD), and is necessary and otherwise complies with the Community Infrastructure Levy Regulations 2010.

Conclusion

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

JP Roberts

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Richard Brown, MSc	Richard Brown Planning Ltd
David Tucker, CEng, MSc, MICE, MIHT	David Tucker Associates
Katie Machin, BSc, CMLI	Pegasus Group

FOR THE LOCAL PLANNING AUTHORITY:

Lucy Hall	South Hams District Council
Wendy Ormsby	South Hams District Council

INTERESTED PERSONS:

Peter Jackson	Devon County Council
Peter Fenwick	Stoke Gabriel Parish Council
Councillor Rosemary Rowe	South Hams DC Local Member
Leaf Lovejoy	Local resident

DOCUMENTS

- 1 Statement of Common Ground
- 2 S106 obligation
- 3 Details for David Tucker
- 4 Drainage consultation response
- 5 Details of Cavanna condition discharge timetables

PLANS

- | | |
|---|--------------------|
| A | Ref: EC1541/100/P5 |
| B | Ref: EC1541/100/P4 |
| C | 17279-08 |

ANNEX

CONDITIONS

- 1) Details of the appearance, landscaping, layout, and scale, (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 access hereby permitted shall be carried out in accordance with the approved plan Ref: EC1651/100/P5.
- 5) No development shall take place, including any works of site clearance or ground preparation until a Landscape and Ecological Management Plan (LEMP) shall be submitted to and approved in writing by the local planning authority. The LEMP shall be based upon an up to date ecological survey of the site and buildings and will include mitigation measures as set out in the ecological survey which shall be integrated with the detailed landscape scheme to be submitted as part of the reserved matters. The LEMP shall include details of habitat creation, management and maintenance and protected species mitigation, compensation and enhancement measures, covering construction and post-construction phases, together with a timetable for implementation. The approved LEMP shall be implemented as approved
- 6) There shall be no installation/construction of street lighting or any other external lighting within the development unless otherwise previously agreed in writing by the local planning authority. Details of any external lighting (including security lighting) to be erected, placed or operated on the site shall be submitted to and approved in writing by the local planning authority prior to its installation/construction. Such details shall include the position, height, type, luminance and cowling of all external lights to the buildings and other parts of the application site. The work shall thereafter be carried out in accordance with the approved details and shall be retained.
- 7) No dwelling shall be occupied until vehicular and bicycle parking facilities and turning spaces for that dwelling have been completed in accordance with details which shall first have been submitted to and approved in writing by the local planning authority. Thereafter the approved parking and turning spaces shall not be used for any purpose other than parking and turning.
- 8) Prior to the commencement of development a Construction Management Plan (CMP) shall be submitted to and approved in writing by the local planning authority. The CMP shall include:

- i) the timetable of the works;
- ii) daily hours of construction;
- iii) confirmation (by means of a site location plan) of the route(s) to and from the site to be used by delivery and construction traffic, together with details of temporary AA Road Signing Strategy;
- iv) any road closure;
- v) hours during which delivery and construction traffic will travel to and from the site, with such vehicular movements being restricted to between 08.00 hours and 18:00 hours on Mondays to Fridays and 09.00 hours to 13.00 hours on Saturdays, and no such vehicular movements taking place on Sundays and Bank/Public Holidays;
- vi) the number and sizes of vehicles visiting the site in connection with the development and the frequency of their visits;
- vii) the compound/location where all building materials, finished or unfinished products, parts, crates, packing materials and waste will be stored during the demolition and construction phases;
- viii) areas on-site where delivery vehicles and construction traffic will load or unload building materials, finished or unfinished products, parts, crates, packing materials and waste with confirmation that no construction traffic or delivery vehicles will park on the public highway for loading or unloading purposes, unless prior written agreement has been given by the local planning authority;
- ix) details of wheel wash facilities;
- x) the means of enclosure of the site during construction works;
- xi) details of proposals to promote car sharing amongst construction staff in order to limit construction staff vehicles parking off-site;
- xii) site management arrangements, including the site office and developer contact number in the event of any construction/demolition related problems, and site security information; and
- xiii) photographic evidence of the condition of the adjacent public highway prior to commencement of any work.

The approved CMP shall be strictly adhered to during the construction of the development hereby permitted, unless variation is approved in writing by the local planning authority.

- 9) No development shall be commenced until the footway approved under planning permission Ref 52/1503/15/F between the vehicular access to that site and the junction of Footpath 6 with Paignton Road has been fully implemented and open for use and no dwelling shall be occupied until all of the off-site highway works, as shown on drawing number EC1541/100 Rev P5 (Engineering Layout) have been fully implemented.
- 10) Notwithstanding the submitted details, no development shall be commenced until:
 - i) details of the works for the disposal of sewage have been submitted to and approved in writing by the local planning authority, and the dwellings shall not be occupied until the approved works have been

completed in accordance with the approved details. The submitted details shall include a completed FDA I form and justification for a private foul system or written permission from South West Water to connect to the public sewer, and

- ii) if the proposed development results in any changes/replacement to the existing system or the creation of a new system, scale plans of the new foul drainage arrangements will also need to be provided. This will include a location plan, cross sections/elevations, specification and its capacity to hold additional load.
- 11) Notwithstanding the submitted details, the development hereby permitted shall not be commenced until:
- i) a programme of percolation tests has been carried out in accordance with BRE Digest 365 Soakaway Design (2016), and the results approved in writing by the local planning authority. A representative number of tests should be conducted to provide adequate coverage of the site, with particular focus placed on the locations and depths of the proposed infiltration devices;
 - ii) details of the proposed means of surface water management and drainage have been submitted and approved by the local planning authority. Any sustainable urban drainage system shall be designed for a 1:100 year event plus 40% for climate change

If the local planning authority concludes that the method of drainage approved as part of this permission is undermined by the results of the percolation tests, a mitigating drainage alternative shall be agreed with the local planning authority

The drainage scheme shall be installed prior to occupation of the dwellings hereby approved in strict accordance with the approved plans, and thereafter it shall be retained in accordance with the agreed details for the life of the development.

- 12) No part of the development hereby permitted shall be commenced until the detailed design of the proposed surface water drainage management system which will serve the development site for the full period of its construction has been submitted to, and approved in writing by, the local planning authority. This temporary surface water drainage management system must satisfactorily address both the rates and volumes, and quality, of the surface water runoff from the construction site.
- 13) If, during development, contamination not previously identified is found to be present at the site then no further development (unless otherwise agreed in writing with the local planning authority) shall be carried out until the developer has submitted, and obtained written approval from the local planning authority for, an investigation and risk assessment and, where necessary, a remediation strategy and verification plan detailing how this unsuspected contamination shall be dealt with.

Following completion of measures identified in the approved remediation strategy and verification plan and prior to occupation of any part of the permitted development, a verification report demonstrating completion of the works set out in the approved remediation strategy and the

effectiveness of the remediation shall be submitted to and approved, in writing, by the local planning authority.

- 14) Prior to the commencement of development, the following components of a scheme to deal with the risks associated with contamination of the site shall be submitted to and approved, in writing, by the local planning authority. That scheme shall include all of the following elements unless specifically excluded, in writing, by the local planning authority.
- i) A preliminary risk assessment/desk study identifying:
 - All previous uses
 - Potential contaminants associated with those uses
 - A conceptual model of the site indicating sources, pathways and receptors
 - Potentially unacceptable risks arising from contamination at the site
 - ii) A site investigation scheme, based on (i) to provide information for an assessment of the risk to all receptors that may be affected, including those off site,
 - iii) The site investigation results and the detailed risk assessment (ii) and, based on these, an options appraisal and remediation strategy giving full details of the remediation measures required and how they are to be undertaken.
 - iv) A verification plan providing details of the data that will be collected in order to demonstrate that the works set out in (iii) are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.

The approved scheme shall be implemented as approved.

- 15) Prior to occupation of any part of the permitted development, a verification report demonstrating completion of the works set out in the approved remediation strategy and the effectiveness of the remediation shall be submitted to and approved, in writing, by the local planning authority. The report shall include results of sampling and monitoring carried out to demonstrate that the site remediation criteria have been met. It shall also include, where relevant, a plan (a "long-term monitoring and maintenance plan") for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action and for the reporting of this to the local planning authority.
- 16) The recommendations, mitigation and enhancement measures of the Ecological Report, by Cotswold Wildlife Surveys on 22 February 2017, shall be fully implemented and adhered to at all times. In the event that it is not possible to do so all work shall immediately cease and not recommence until such time as an alternative strategy has been agreed in writing with the local planning authority,
- 17) No development shall take place until full details of a hard and soft landscape scheme have been submitted to, and approved in writing by the local planning authority. The landscape scheme shall include:

- i) materials, heights, levels and extent of hard landscape treatment, including access points, roads and any hardstanding areas;
- ii) details of earthworks associated with the development, including volumes of cut and fill and arrangements for disposal of any excess excavated material or importation of material;
- iii) details, including design and materials, of ancillary structures such as bin stores;
- iv) details of new ground profiles including any retaining builds and banks;
- v) materials, heights and details of fencing and other boundary treatments;
- vi) the location, number, species, density, form and size of proposed tree, hedge and shrub planting, and
- vii) a timetable for implementation of all hard and soft landscape treatments.

The landscaping scheme shall be implemented in accordance with the approved details. Any trees, shrubs or hedges which are removed, die or become severely damaged or seriously diseased within five years from the occupation of the dwelling shall be replaced with trees, shrubs or hedge plants of similar size and species unless the local planning authority gives written consent to any variation.