
Appeal Decision

Site visit made on 29 January 2018

by David Wildsmith BSc(Hons) MSc CEng MICE FCIHT MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15th February 2018

Appeal Ref: APP/R3325/W/17/3181609

Land north of Lyndhurst Grove, Martock, Somerset, TA12 6HW

- 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 R Frankpitt against the decision of South Somerset District Council.
 - The application Ref 13/01500/OUT, dated 15 April 2013, was refused by notice dated 28 March 2017.
 - The development proposed is a residential development for 35 dwellings.
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Decision

1. The appeal is allowed and planning permission is granted for a residential development for 35 dwellings on land north of Lyndhurst Grove, Martock, Somerset, TA12 6HW, in accordance with the terms of the application, Ref 13/01500/OUT, dated 15 April 2013, subject to the 12 conditions set out in the attached Schedule.

Application for costs

2. An application for costs was made by Mr R Frankpitt against South Somerset District Council. This application is the subject of a separate Decision.

Preliminary matters of clarification

3. The application is submitted in outline, with all matters except for access reserved for later determination. Alternative "concept layout plans" have been submitted, but I have treated these as illustrative only.
4. In October 2013 the Council resolved to grant planning permission for this proposal, subject to the completion of a Section 106¹ (S106) agreement dealing with such matters as the provision of 12 of the dwellings as affordable housing units; a financial contribution towards outdoor playing space, sport and recreation facilities; the provision of travel planning measures; and the provision of a S106 monitoring fee.
5. Such a S106 agreement was, however, not completed, and the appellant has sought to renegotiate several elements of the agreement, for reasons of scheme viability. To this end the appellant has submitted a S106 unilateral undertaking aimed at securing a number of planning obligations. I discuss these points under the main issues, below.

¹ Section 106 of the Town and Country Planning Act 1990, as amended

Main issues

6. In light of the Council's reasons for refusal the main issues are, firstly, whether the proposed development would represent an acceptable level of growth for Martock; and secondly, whether the amount of affordable housing and other planning obligations proposed, is acceptable.

Reasons

Housing growth

7. The appeal site is a level, agricultural field of some 1.35 hectares, located at the western side of Martock, outside, but immediately adjacent to, the settlement boundary. It lies to the north of Lyndhurst Grove, a small residential cul-de-sac from where access to the development is proposed by extending the existing road. The site is bounded to its east by employment development within Martock; by vegetation alongside a disused railway line to the north; and by further open agricultural land to the west. The South Somerset Local Plan (SSLP), adopted in 2015, identifies Martock as a Rural Centre, with Policy SS5 setting a target of at least 230 dwellings for this settlement over the plan period of 2006 to 2028.
8. Paragraph 49 of the National Planning Policy Framework ("the Framework"), makes it clear that housing applications should be considered in the context of the presumption in favour of sustainable development. However, this paragraph goes on to indicate that where a Council is unable to demonstrate a 5-year supply of deliverable housing land – as here – then relevant policies for the supply of housing should not be considered up-to-date.
9. In such circumstances the decision maker is directed to paragraph 14 of the Framework, which explains that where the development plan is absent, silent or relevant policies are out-of-date, planning permission should be granted unless (i) any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole; or (ii) specific policies in the Framework indicate that development should be restricted. In this case there is no suggestion that part (ii) comes into play.
10. There is general agreement that the appeal site represents a sustainable location for development. Indeed, as already noted, the Council found this proposal to be acceptable in principle in 2013. Furthermore, in my assessment the proposed development would satisfy, or not conflict with, the 3 dimensions of sustainable development set out in paragraph 7 of the Framework. In economic terms it would produce employment benefits during the construction phase and would provide much needed housing, including an element of affordable housing. The local economy would also be likely to benefit from the additional spend arising from this increased population.
11. In social terms the market and affordable housing would assist in meeting the Council's housing requirement, and the offered planning obligations would result in community benefits through the provision of on-site open space, an off-site length of footway on Coat Road (where there is presently a gap in the footway), and funding for further local infrastructure projects. Taken together, these matters would help to support a strong, vibrant and healthy community in Martock.
12. In environmental terms, although there would be the loss of some currently undeveloped agricultural land, the Council's Landscape Architect raises no landscape objection, noting that this is an area of land that is indicated as having

a potential for development by the June 2008 peripheral landscape study of Martock. I, too, consider that the proposed development would result in no material adverse impact on visual amenity, as it would be seen in the context of the existing development at Lyndhurst Grove and against the backdrop of the existing employment development referred to earlier. In any case, there would be clear scope for appropriate landscaping along the western boundary, as shown illustratively on the submitted concept layout plans. In addition, in light of the submitted Ecological Assessment, no objections are raised on ecological grounds.

13. Moreover, the provision of a length of public footway along the north side of Coat Road, referred to above, would establish continuous pedestrian access between Lyndhurst Grove and the centre of Martock and, in my opinion, would result in some improvements to the physical environment.
14. The Officers' report to Committee advised Council Members that the 35 dwellings proposed here were included in the assumed commitments figure of 175 dwellings over the plan period. At the time of the Committee meeting it was considered that the latest figures indicated a total of 276 housing completions and commitments in Martock over the plan period. Council Officers described this as only marginally exceeding the 230 figure in Policy SS5, and considered this level of growth for Martock to be acceptable, but Council Members did not agree as is evidenced by the first reason for refusal.
15. However, as has already been noted, the Council cannot currently demonstrate a 5-year supply of deliverable housing land, such that policies like SS5 cannot be considered up-to-date, and I therefore only give this policy a modest amount of weight in this appeal. Whilst I see no reason to dispute the general principle of the distribution of development across the settlement hierarchy, the actual numbers contained in the policy – which in any case were to be considered as minima – should not in any way be binding.
16. Furthermore, more up-to-date information submitted by the appellant in his final comments, and not disputed by the Council, indicate that the current completions and commitments figure for Martock now stands at 151 dwellings. I understand that this takes account of the fact that an outline planning permission for 95 dwellings on land to the south of Coat Road has now expired without a material start having been made; and that planning permission has recently been allowed for 24 dwellings at Triways, Martock. As pointed out by the appellant, in these circumstances, the approval of the 35 dwellings in the current proposal would bring the total housing supply figure for Martock to 186 dwellings, appreciably below the figure of 230 dwellings set out in Policy SS5.
17. Taking all the above points together, I see no good reason why the appeal proposal should be considered to extend the housing provision for Martock beyond an acceptable level. On this first main issue I therefore conclude that the proposed development would represent an acceptable level of growth for Martock and, as such I find no conflict with SSLP Policy SS5.

Affordable housing and other planning obligations

18. Dealing first with affordable housing, the appellant originally intended that 12 of the dwellings would be provided as affordable housing units. However, as discussions with the Council on this matter proceeded, the appellant maintained that this amount of affordable housing made the overall proposal unviable.

19. Paragraph 173 of the Framework makes it clear that pursuing sustainable development requires careful attention to viability and costs in both plan-making and decision-taking. This paragraph further explains that to ensure viability, the costs of any requirements likely to be applied to development, such as requirements for affordable housing and infrastructure contributions should, when taking account of the normal cost of development and mitigation, provide competitive returns to a willing land owner and willing developer to enable the development to be deliverable.
20. SSLP Policy HG3 sets a target of 35% affordable housing for most areas, including Rural Centres such as Martock. Amongst other matters the policy explains that where this level of affordable housing provision renders a site unviable, a reduction of provision will be accepted on the basis of an "open book" submission in accordance with Policy SS6. In turn, this latter policy indicates that the Council will secure the provision of (or financial contributions towards) affordable housing, social, physical and environmental infrastructure and community benefits which the Council considers necessary to enable the development to proceed. Again, it makes it plain that where viability of a scheme is contested, the Council will adopt an open book approach to negotiations, in line with its adopted procedures.
21. In this case, the appellant put forward a revised proposal for 4 affordable dwellings, which was considered by the District Valuer who agreed that this represented a viable level of provision, along with a revised level of financial contribution to local play space, sport and recreation facilities. Council Officers also considered that this reduced level of affordable housing and other planning obligations made the overall scheme acceptable in viability terms, and it was on this basis that Officers recommended the proposal for approval.
22. However, Council Members did not accept their Officers' advice on this point, arguing instead that more affordable housing should be provided. That said, it is unclear to me on what basis this view was formed. Whilst it is the case that no detailed financial information at all regarding viability has been placed before me, no firm evidence has been submitted to demonstrate that the District Valuer was in error in accepting that the 4 affordable housing units offered are, indeed, the maximum which could viably be accommodated on this site.
23. On this matter, I have noted the comment made in the Council's appeal statement, to the effect that the appellant may have paid too much for the appeal site, but no such assertion appears to have been made prior to this point, and in any case it is strongly disputed by the appellant, who maintains that the site has been in his family for over 30 years.
24. In summary, SSLP Policies HG3 and SS6 both acknowledge that the amount of affordable housing on a particular site will need to be negotiated, and paragraph 173 of the Framework indicates that viability matters need to be taken into account when considering development proposals. There is no firm evidence before me to suggest or demonstrate that any greater quantum of affordable housing could be viably provided on this site than the 4 units currently proposed.
25. Turning to other planning obligations, the original intention in 2013 was that the S106 agreement would provide a financial contribution of some £171,565 towards the increased demand for outdoor playing space, sport and recreation facilities, in accordance with SSLP Policy HW1; some agreed travel planning measures; and a S106 monitoring fee. However, the Council Officers' report stated that in light of national guidance and a number of legal cases, the S106 monitoring fee could no

longer be justified; and that travel planning matters could more satisfactorily be addressed by means of a planning condition. I see no reason to take a contrary view on these points.

26. The Officers' report did, however, note that a contribution towards the increased demand for sport and recreation facilities would still be appropriate, and that this had been re-negotiated to a figure of £130,158, which, together with the offered 4 affordable housing units, was considered to represent a viable proposal by the District Valuer. Since that time the Council has introduced a Community Infrastructure Levy ("CIL") Charging Schedule, in accordance with the CIL Regulations, 2010. The appeal proposal would be liable to a CIL charge estimated to be about £102,400 and the appellant's position – as set out in the submitted S106 unilateral undertaking, is that the local infrastructure contribution should be the difference between the 2 figures set out above – namely £27,768².
27. In its appeal statement the Council has moved away from the position described above, and has reverted to the original S106 figure and the requests for travel planning measures and a S106 monitoring fee. However, I do not consider that this stance can be supported, in light of the District Valuer's opinion set out above, and the fact that the Council has submitted no detailed justification for reverting to its former position.
28. Summary. For the reasons given above, I conclude that the appeal proposal represents an acceptable provision of affordable housing and other planning obligations. I agree that these obligations are necessary to make the development acceptable and that they meet the requirements of paragraph 204 of the Framework and Regulation 122 of the CIL Regulations 2010 as they are necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development. Accordingly I find no conflict either with SSLP Policies HG3, HW1 or SS6, or with guidance in the Framework to which I have already referred.

Other matters

29. Existing residents of Lyndhurst Grove and other interested persons have raised a number of concerns and objections relating to a variety of matters, including problems arising from increased traffic flows, parking problems and issues of road safety. However, the local highway authority considers that the predicted peak hour traffic increases of up to 22 vehicles could be safely accommodated on Lyndhurst Grove with no significant difficulties, and there is no firm evidence before me to cause me to take a contrary view.
30. Similarly, although I have noted the objections raised on grounds of the location of the proposed open space/play area; drainage; sewerage capacity; and impact on local infrastructure, these concerns are not shared or supported by the relevant technical consultees or service providers. As such, I am not persuaded that these matters should weigh against this proposal. In addition, I share the view of Council Officers, that subject to the consideration of matters of layout, at a reserved matters stage, this proposal is unlikely to give rise to any significant impact on residential living conditions.

² Note: The final figure for this contribution is expressed in the unilateral undertaking as "£130,158 – A = Local Infrastructure Contribution", where "A" is the total amount payable in respect of CIL for the proposed development. The contribution has been expressed in this way to reflect the fact that the scheme at present is only in outline, and that changes at reserved matters stage could affect the amount of CIL payable.

31. Finally, I have noted the concerns raised by the occupiers of the adjacent industrial site that operations on the industrial site could impact upon the living conditions of new residents, and also that the viability of this business could be threatened by complaints about noise from new residents. There is also a suggestion that the appeal proposal could prejudice future expansion of the employment use.
32. However, the submitted noise assessment concludes that with appropriate and commensurate noise mitigation measures incorporated into the proposed development, the potential impact of noise from adjacent industrial noise sources could be adequately controlled. In this regard I note that conditions are suggested to require a 20m buffer zone, the provision of an acoustic barrier and the agreement of sound insulation and noise mitigation measures for each dwelling, and in these circumstances I am satisfied that issues of noise could be adequately addressed. Moreover, no persuasive evidence has been placed before me to indicate that there is any requirement for the appeal site to be safeguarded for employment use.

Planning balance and overall conclusion

33. This proposed development would give rise to economic and social benefits, as detailed above, and would be more or less neutral in environmental terms. No material disbenefits have been identified, to significantly and demonstrably outweigh these benefits and, as such, this proposal represents sustainable development. This is a material consideration in the appeal proposal's favour.
34. I have not found against the appeal proposal on either of the main issues, and even though SSLP Policy SS5 has to be considered out-of-date and can therefore only carry modest weight in this appeal, I do not find the proposal to conflict with this policy. Nor do I find a conflict with the other development plan policies referred to above. In view of all these points, I conclude that this proposal should be allowed, subject to a number of conditions, as detailed below.

Conditions

35. Conditions 1 and 2 are standard conditions for outline permissions, whilst conditions 3, 4 and 5 deal with various aspects of noise control, in the interests of safeguarding the living conditions of future residents. Conditions 6 and 7 are imposed to prevent the risk of flooding, to improve and protect water quality, improve habitat and amenity, and ensure future maintenance of the surface water drainage system. Conditions 8, 9 and 10 are imposed in the interests of highway safety, with Condition 8 also aimed at safeguarding visual amenity. Condition 11 is imposed to provide certainty to the permission, whilst Condition 12 is aimed at ensuring that the level of development is compatible with the locality.
36. I have had regard to all other matters raised, but they are not sufficient to outweigh the considerations which have led me to my conclusion that this appeal should be allowed.

David Wildsmith

INSPECTOR

Schedule of conditions (12 in total)

- 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 begins 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 before the expiration of 3 years from the date of this permission and the development shall begin no later than 3 years from the date of this permission or not later than 2 years from the approval of the last "reserved matters" to be approved.
- 3) Prior to the commencement of the development hereby approved, details of an acoustic barrier along the eastern boundary of the site shall be submitted to and approved in writing by the local planning authority. Once approved, this barrier shall be fully erected prior to the occupation of the dwellings and shall be maintained and not altered thereafter without the prior permission of the local planning authority.
- 4) No dwelling shall be sited within 20m of the acoustic barrier referred to in condition 3.
- 5) Prior to the commencement of the development hereby approved, a noise mitigation scheme shall be submitted to and approved in writing by the local planning authority. The scheme shall contain measures to ensure that noise from nearby sources will not cause detriment to amenity or a nuisance to the proposed development. Once approved, the scheme shall be fully implemented prior to the occupation of the dwellings. Subsequently the scheme shall be maintained and not altered without the prior permission of the local planning authority.
- 6) No development shall commence until a surface water drainage scheme for the site, in accordance with the submitted Flood Risk Assessment By Sands Ltd (reference 13.06.180 dated June 2013), has been submitted to and approved in writing by the local planning authority. The scheme shall subsequently be implemented in accordance with the approved details before the development is completed.
- 7) No development approved by this permission shall be occupied or brought into use until a scheme for the future responsibility and maintenance of the surface water drainage system has been submitted to and approved in writing by the local planning authority. The approved drainage works shall be completed and maintained in accordance with the details and timetable agreed.
- 8) The proposed estate roads, footways, footpaths, tactile paving, cycleways, verges, junctions, street lighting, sewers, drains, retaining walls, service routes, surface water outfall, vehicle overhang margins, embankments, visibility splays, accesses, carriageway gradients, drive gradients, car, motorcycle and cycle 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.
- 9) The proposed roads, including footpaths and turning spaces where applicable, shall be constructed in such a manner as to ensure that each dwelling before it is occupied shall be served by a properly consolidated and surfaced footpath and

carriageway to at least base-course level between the dwelling and existing highway.

- 10) No dwelling hereby approved shall be occupied until a continuous footway link has been provided between Lyndhurst Grove and North Street in accordance with design and specification to be agreed in writing by the local planning authority.
- 11) The site hereby approved for development shall be as shown on the submitted location plan 2023-PL-01 received 16 April 2013.
- 12) The development hereby approved shall comprise no more than 35 dwellings.