



Appeal Decision

Site visit made on 24 July 2018

by Neil Pope BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 August 2018

Appeal Ref: APP/K1128/W/17/3185418

Proposed phase 2 development site, Mill Lane, Frogmore, Kingsbridge, Devon, TQ7 2PA.

- 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 the Perraton Family against the decision of South Hams District Council.
 - The application Ref. 1768/16/OPA, dated 8/6/16, was refused by notice dated 17/7/17.
 - The development proposed is the erection of 46 dwellings (including affordable/starter homes), creation of community allotments, accesses, highway improvements and associated landscaping, provision of new community village hall/sports pavilion with access, car park and landscaping and the change of use of 0.46 hectares of agricultural land to provide extended public amenity land (including new grass sports pitch).
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. All matters of detail have been reserved for subsequent consideration. With the exception of the 'red line' site area plan, I have treated all other drawings as being illustrative only.
3. Prior to the determination of the application the site was reduced in size and the description of the proposed development was changed. The proposal is now for the erection of 28 dwellings (including affordable/starter homes), creation of community allotments, accesses, highway improvements and associated landscaping.
4. The appeal site lies within the South Devon Area of Outstanding Natural Beauty (AONB). In determining the appeal I have had regard to the duty under section 85(1) of the Countryside and Rights of Way Act 2000.
5. The Council accepts that it is unable to demonstrate a five year housing land supply (HLS) within the district. It also accepts that the 'tilted balance' in paragraph 11 of the National Planning Policy Framework (the Framework¹) would apply if there was no demonstrable harm to the AONB and/or the proposal does not amount to major development within the AONB.
6. Following the submission of an addendum to the appellant's ecology report and consideration by the Council's ecologist, the Council has informed me that

¹ The revised Framework that was published in July 2018.

subject to the use of planning conditions and Cirl bunting mitigation, it no longer wishes to pursue its fourth reason for refusal.

7. The appellant has submitted a unilateral undertaking under the provisions of section 106 of the Town and Country Planning Act 1990 (as amended). This includes provision for: nine of the proposed dwellings to be made affordable; off-site Cirl bunting mitigation measures; community allotments; contributions towards the cost of educational infrastructure and a Traffic Regulation Order; equipped play/sports area(s); a footpath linking the site to the A379; a new pavement alongside a section of the A379; the submission of a Landscape and Ecology Management Plan and; a Travel Pack for use by future residents. If I was minded to allow the appeal it would be necessary to consider these obligations under the provisions of paragraph 56 of the Framework and the Community Infrastructure Levy Regulations 2010 (as amended).

Main Issue

8. The main issue is the effect upon the character and appearance of the area, including the natural beauty of the AONB and the setting of Frogmore.

Reasons

Planning Policy

9. My attention has been to various development plan² and emerging local plan³ policies. The most relevant policies to the determination of this appeal are: CS policies CS1 [location of development⁴] and CS9(1) [AONB]; DPD policy DP2 [landscape character] and; eJLP policies SPT11 [natural environment], DEV24 [landscape character] and DEV27 [nationally protected landscapes].
10. I also note the provisions of the South Devon AONB Management Plan 2014-2019 (MP). Amongst other things, this identifies the special qualities⁵ of the AONB and sets out numerous policies. These include: conserving and enhancing the special qualities, distinctive character and key features of the AONB (policy Lan/P1) and; protecting the character of open views into, within and out of the AONB (policy Lan/P5). Whilst not forming part of the development plan, the MP has been subject to a process of stakeholder consultation. It can be given moderate weight.

Character and Appearance

11. This 2.5 hectare appeal site is split into two parts (A and B). It lies to the south (part A) and east (part B) of the attractive village of Frogmore, which is situated at the end of Frogmore Creek. Part A is approximately 2.1 ha and is accessed via a new housing estate⁶ off Creek Close. It forms part of a larger field (in arable use) that rises in a southerly direction away from the settlement

² This includes the South Hams Core Strategy (CS) that was adopted in 2006 and the South Hams Development Policies Development Plan Document (DPD) adopted in 2010.

³ The Plymouth & South West Devon Joint Local Plan 2014-2034 (eJLP). This has reached an advanced stage towards adoption and the most relevant policies are broadly consistent with the provisions of the Framework and can be given moderate weight.

⁴ Frogmore is identified as a village where development is acceptable in principle. Outside settlements development is strictly controlled.

⁵ These include: deeply rural rolling patchwork agricultural landscape; deeply incised landscape that is intimate, hidden and secretive away from plateau tops and; iconic wide, unspoilt and expansive panoramic views.

⁶ This comprises 9 affordable units and 1 open market dwelling (ref. 43/2855/14/F)

- edge and includes established hedgerows. Part B is mainly amenity land that runs between the A379 and Mill Lane.
12. As I noted during my site visit, much of the appeal site forms part of the very attractive open countryside that surrounds Frogmore. The landscape features on the site are generally in good condition and its landform assists in containing the settlement and providing a distinct sense of place. Part A is a portion of the unspoilt lower valley slopes to the south of the village and is characteristic of the deeply rural rolling patchwork agricultural landscape in this part of the South Hams. It contributes to the special qualities of the AONB and is an integral part of the charming rural setting to Frogmore. The area is also popular with residents and visitors throughout the year. Frogmore contributes to an experience of this nationally important landscape.
 13. I disagree with the appellant's Landscape and Visual Impact Assessment that the landscape is of "*High-Medium*" sensitivity. Given my findings above, it is of high sensitivity. Other than those travelling in motor vehicles along the A379, residents and visitors to Frogmore, who would see the site from some neighbouring buildings and/or sections of minor public roads and rights of way such as those along Frogmore Creek⁷, would be high sensitivity receptors. The appellant is likely to have under-estimated the landscape and visual impact of the proposed development.
 14. As set out within the Framework, great weight should be given to conserving and enhancing landscape and scenic beauty in the AONB. The scale and extent of development should be limited and planning permission should be refused for major development other than in exceptional circumstances, and where it can be demonstrated that the development is in the public interest. Footnote 55 of the Framework (which applies to the AONB) states whether a proposal is 'major development' is a matter for the decision maker, taking into account its nature, scale and setting, and whether it could have a significant adverse impact on the purposes for which the area has been designated or defined.
 15. The main parties disagree as to whether or not the proposal comprises major development. As made clear in Annex 2/The Glossary and Footnote 70 to the Framework, for AONBs this does not mean development of 10 or more homes or a site with an area of 0.5 ha or more. Dwellings and ancillary development, including much of the housing in Frogmore, forms part of the AONB. A mix of open market and affordable housing would not, in itself, be a type of development that would necessarily amount to a major development.
 16. However, in this instance, the proposal would involve a substantial extension of a very modest-sized settlement along the lower slopes of an unspoilt river valley. Although the illustrative layout plan indicates that the proposed dwellings would be confined to the lower section of a field (part A) on the southern side of this valley, the amount of new buildings and the extent of likely internal roads, footways, hard surfaced areas and street lighting on this sizeable area of land would be of a significant scale in this part of the AONB.
 17. Moreover, the proposal would take place within a part of the landscape that is integral to the setting and charm of the village of Frogmore. It would comprise major development within the AONB. As a consequence, and notwithstanding

⁷ Within the MP, the distinctive characteristics of the iconic wide, unspoilt and expansive panoramic views include long framed views along combes, river valleys, estuary creeks and green lanes.

the HLS situation within the district, the 'tilted balance' contained within paragraph 11 of the Framework is not engaged.

18. The appellant's agent has drawn my attention to appeal decisions from elsewhere and where larger housing schemes were found not to comprise major development within an AONB. These include a proposal for 32 dwellings at Kingsbridge⁸ and up to 39 dwellings on a site at Tetbury in Gloucestershire⁹.
19. Kingsbridge and Tetbury are both towns and are much larger settlements than Frogmore. The context for considering the scale of new development in those cases would therefore be very different to a small village. I also note from the relevant appeal decision that the site at Kingsbridge was enclosed by housing to south, there was an industrial estate to the north and it was adjacent to a scout hut and public park. The setting for that development is also materially different to the site at Frogmore.
20. At Tetbury the site was bound on two sides by housing and the A433 on another side. A previous Inspector had also found that additional housing on that site would round-off development in the locality. In addition, the issue of major development was not disputed by the main parties.
21. These other appeal decisions are materially different to the situation before me. The Council has also drawn my attention to another appeal decision¹⁰ in respect of 15 dwellings elsewhere in the district which was found to comprise major development. Each case must be determined on its own merits and none of these other decisions set a precedent that I must follow.
22. Siting the proposed dwellings in the lower section of the field¹¹ (part A) and the provision of new hedgerows and a scheme of tree planting across the site would reduce the landscape and visual impact of the proposals. Notwithstanding the proposed mitigation, the landform of the site would be altered and the scale of the proposed development would amount to a sizeable expansion of Frogmore. The agricultural use of the site would be permanently lost and the settlement edge would encroach into the lower slopes of the southern side of the valley. Attempts to moderate the landscape impact of the development would have only a very limited effect. The site already forms an attractive "green buffer" to the village.
23. The development would be seen in association with some existing dwellings, including the houses in Creek Close, and would not be especially prominent from the public realm. However, it would erode the rural landscape setting of the village. From in and around Frogmore the new dwellings, roads, hard surfaced areas, street lighting, play area, domestic paraphernalia and residential activity would combine to diminish the perception of a deeply rural rolling patchwork agricultural landscape. This sizeable urban addition would detract from the setting of Frogmore and have a significant adverse effect upon the natural beauty and landscape character of the AONB. The proposal would conflict with the provisions of CS policy CS9(1), DPD policy DP2, eJLP policies SPT11, DEV24 and DEV27, as well as MP policies Lan/P1 and Lan/P5.

⁸ Ref. APP/K1128/W/16/3156062.

⁹ Ref. APP/F1610/A/12/2173305.

¹⁰ APP/K1128/W/17/3179284.

¹¹ I note that the maximum level for the new road would be approximately 16.0 metres AOD.

24. As also set out within the development plan and eJLP, great weight should be given to conserving and enhancing landscape and scenic beauty in the AONB. Planning permission should be refused for major development other than in exceptional circumstances, and where it can be demonstrated that the development is in the public interest.
25. The proposed development would help to address the very substantial shortfall in housing land supply within the district. It would also provide some additional affordable dwellings for those who are currently unable to access the local housing market. In this regard, and notwithstanding the nine dwellings at Creek Close and other affordable housing in Frogmore, there remains a pressing need for such accommodation within the South Hams. The appellant, as a local landowner, should be commended for the continuing effort to help meet the housing needs of the local community. It is perhaps unfortunate that a scheme could not be worked up with the support of the Parish Council.
26. In addition, the proposal would include new allotments¹² and public open space provision. The new dwellings would be conveniently located for access to services and facilities, including the local bus service. Incoming residents would help sustain these services and facilities. The development would also provide support to the local construction industry. It would bring social and economic benefits. The totality of these benefits, including the contribution to HLS, weighs heavily in support of the argument for granting permission.
27. However, the high quality environment within the South Hams is also important to the local economy, not least in attracting visitors and the income this generates to local services and businesses. Sadly, across the country, the Council is very far from alone in being unable to demonstrate an adequate supply of land for housing, as well as having a pressing need for more affordable dwellings. The benefits of the proposal do not amount to exceptional circumstances necessary to justify major development within the AONB and outweigh the environmental harm that I have identified above. Whilst there is support for the proposals by some local residents there is much opposition, including strong objections from the Parish Council.
28. I note the appellant's argument that within the Council's 2017 Strategic Housing and Economic Land Assessment the only available sites for housing at Frogmore are within the AONB and that development in much of the district is constrained by landscape and environmental protection policies. However, the Council has informed me that sites are being brought forward through the eJLP and these have been carefully selected to ensure that the AONB is conserved and enhanced. On the basis of the evidence before me¹³, it is by no means certain that no other more suitable sites for housing exist, including land outside the AONB. The environmental constraints within the South Hams do not amount to exceptional circumstances necessary to justify this major development within this part of the AONB and outweigh the above noted harm.
29. I also note the appellant's argument that the Council has been inconsistent in its landscape and visual assessment of the appeal scheme when compared to the assessment it undertook for the Creek Close scheme. However, the latter

¹² I note the Parish Council's comments that there is very limited need for community allotments in the Parish.

¹³ This includes the representations made by the Parish Council which, amongst other things, includes reference to nominated sites on land outside the AONB as part of a Neighbourhood Plan questionnaire and planning applications for housing schemes in neighbouring villages that are also outside the AONB.

is a much smaller site/development and, as I have already noted above, each case must be determined on its own merits. The Creek Close development does not set a precedent that I am bound to follow. Furthermore, the inclusion of the appeal site within a previous Strategic Housing Land Availability Assessment does not convey any tacit approval for the proposals before me.

30. Some interested parties have expressed concerns over the proposed access arrangements. However, this matter was carefully considered by the Council and the Local Highway Authority and permission was not refused on highway safety grounds. There is no cogent evidence to justify a different conclusion.
31. Given the above, and having regard to all other matters raised, I conclude that the proposal would seriously harm the character and appearance of the area. The appeal should not therefore succeed.

Neil Pope

Inspector