
Appeal Decision

Site visit made on 20 August 2018

by Thomas Bristow BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 September 2018

Appeal Ref: APP/X1118/W/18/3197384

Land adjacent 24 Spurway Gardens, Combe Martin, Ilfracombe EX34 0PL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 as amended against a refusal to grant outline planning permission.
 - The appeal is made by Charterwell Ltd. against the decision of North Devon District Council ('NDDC').
 - The application Ref 63453, dated 5 July 2017, was refused by notice dated 8 September 2017.
 - The development proposed is 5 dwellings.
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Decision

1. The appeal is allowed and planning permission is granted for 5 dwellings at land adjacent 24 Spurway Gardens, Combe Martin, Ilfracombe EX34 0PL in accordance with the terms of the application Ref 63453, dated 5 July 2017, subject to the schedule of conditions below.

Preliminary matters

2. As the proposal is in outline I have treated plan 17254-051 Revision B as illustrative of the potential access, appearance, landscaping, layout and scale of the proposed dwellings (the 'reserved matters').
3. Notwithstanding the planning history here, each proposal must be determined on its merits in accordance with the development plan unless material considerations indicate otherwise. The development plan includes saved policies of the North Devon Local Plan (adopted originally July 2006, the 'LP').
4. Material considerations include the emerging Joint North Devon and Torridge Local Plan ('JLP'), the National Planning Policy Framework published on 24 July 2018 ('NPPF') and the Planning Practice Guidance ('PPG'). Aside from certain nuances I am not of the view that the current iteration of the NPPF significantly alters the policy context relevant to this appeal compared with the previous version. The main parties have not made representations to the contrary.
5. NPPF paragraph 213 explains that it is the consistency of older development plan policies with the approach in the NPPF that determines their currency, rather than the age of a plan or whether a five year land supply of deliverable housing sites relative to needs can be demonstrated ('5YHLS').

Policy context and main issue

6. NPPF paragraph 54 sets out that consideration should be given to whether otherwise unacceptable development could be made acceptable through the use of planning conditions or obligations (in that order of preference). NPPF

paragraph 56, reflecting Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 as amended (the 'CIL Regs'), requires that obligations are necessary to make the development acceptable in planning terms, directly related to it, and fairly and reasonably related in scale and kind.

7. A Ministerial Statement of 28 November 2014 (the 'MS'),¹ set out certain circumstances in which obligations should not be sought. It ultimately resulted in amendments to the PPG and to the NPPF.² In summary affordable housing and tariff style planning obligations should not be sought from minor development such as residential development of 10 units or less, albeit that in designated rural areas such as Combe Martin a lower threshold of 5 units or less may be set.
8. CIL Reg 123(3) states that a planning obligation may not constitute a reason for granting permission to the extent that it provides for the funding of an infrastructure project or type of infrastructure, and five or more separate obligations have been entered into for such. Similarly the PPG explains that, where the threshold described above applies, planning obligations should not contribute to 'pooled funding 'pots' intended to fund the provision of general infrastructure in the wider area'.³ That is the essence of a tariff-style contribution as described by the PPG, albeit that establishing whether that is the case in specific instances is inherently a matter of planning judgement.
9. Given that context, the main issue is whether or not, in the absence of planning obligations related to the provision of (i) affordable housing, (ii) public open space, and (iii) education, the development proposed would be acceptable.

Reasons

10. The appeal site is a parcel of untended hillside land. It has a modest frontage to Spurway Gardens, an established residential area of Combe Martin characterised predominantly by detached bungalows of relatively recent construction. It falls within the settlement boundary for the village set via LP policy HSG2 in relatively close proximity to other development in all directions. Whilst the proposal is in outline, there is therefore nothing to indicate that the creation of five dwellings here could not suitably assimilate with its surroundings in respect of character and appearance.⁴

Affordable housing

11. LP policy HSG1A makes provision for about 3,200 dwellings across the District between 2003 and 2011. Combe Martin is defined as a local centre, where some level of development is accorded in-principle support. However LP paragraph 3.6 explains that as the village is within the locally-defined Area of Strategic Landscape and Development Constraint ('ASLDC'), development is essentially restricted to that which meets the needs of local communities in order to protect landscape character.

¹ Official record Ref HCWS50.

² Reference ID: 23b-031-20161116 of the former and paragraph 63 of the latter

³ Reference ID: 23b-014-20160519.

⁴ Noting that the appeal site is within the North Devon Area of Outstanding Natural Beauty, Heritage Coast and Coastal Preservation Area (with regard to Section 85(1) of the Countryside and Rights of Way Act 2000 as amended in respect of the former, and the relevant provisions of the development plan and of NPPF paragraph 127 in respect of all).

12. Against that background LP policy HSG7 sets out that a contribution towards affordable housing provision will be required where a proposal exceeds the relevant 'trigger threshold'. In Combe Martin the LP trigger threshold is any site capable of delivering more than one dwelling. LP policy CBM2C supports development at the appeal site, as shown on inset map 15.4, which is described as completing the development of Spurway Gardens.
13. LP policy CBM2C is in contrast to the general approach in the ASLDC, which reinforces my reasoning in paragraph 10 above. To meet the needs of the local community with regard to LP policy HSG7, LP policy CBM2C specifies, however, that development should be for 'about 6 dwellings including at least 3 affordable homes'.
14. Following the adoption of the LP the appeal site has been the subject of various applications dating back to January 2008.⁵ Application Ref 57540 was amended around the time of the MS so as to propose five rather than six dwellings. The MS was premised upon removing the disproportionate burden of developer contributions on small scale developments in order to spur housing delivery. By 2014 the appeal site had remained undeveloped for some eight years since its allocation, and around six years since an initial application was made.⁶
15. As of April 2018 the Devon Home Choice Register recorded 46 households eligible for affordable housing with a connection to Combe Martin, which supersedes an earlier survey with qualified representativeness. Whilst indicative of a clear local need for affordable housing, that is not unique to Combe Martin. Evidence supporting the JLP indicates an annual need for around 174 affordable homes across North Devon and a high ratio of house prices relative to income levels. The examination of the JLP also identified a record of persistent under delivery of housing, and that affordable housing provision targets set via the LP were overly ambitious.⁷
16. Consequently District-wide housing dynamics, notably undersupply, have exacerbated affordable housing pressures and needs, including in Combe Martin.⁸ The MS, PPG, NPPF and JLP all aim to improve housing affordability by boosting delivery in aggregate terms, including by operating proportionately so as to facilitate smaller-scale development. Moreover JLP policy CMA makes provision for a minimum of 48 new dwellings at Combe Martin over the plan period of 2011-2031, which would fulfil only a fraction of local needs for affordable housing.
17. Furthermore JLP policy ST18 does not propose requiring affordable housing contributions from schemes of 5 dwellings or fewer. NDDC's position that they are able to demonstrate a 5YHLS as a result of examination sits somewhat awkwardly with their argument that JLP policy ST18 should be given only moderate weight as the two elements of the JLP are inter-dependent (notwithstanding the appeal site appears to comprise part of the Council's 5YHLS calculations).

⁵ Ref 43196, 51561, 57540, 61263 and 63453 (the subject of this appeal).

⁶ The appellant makes reference to a 2012 valuation report, however that is not before me.

⁷ NDDC appeal statement, appendix 2.

⁸ That is setting aside any argument by the appellant of alleged failings by the Council to use funds effectively.

18. Therefore, irrespective of the original rationale for its allocation, geographically and in terms of scale the primary manner in which the JLP envisages addressing housing provision is outside of Combe Martin and via schemes of greater scale than proposed here. The proposal would contribute to housing delivery against a backdrop of undersupply, an acknowledgement that LP affordable housing targets have been unachievable, and in respect of a site which has not come forward for 12 years since its allocation.
19. Those issues have exacerbated the lack of affordable housing provision, the basis on which NDDC refused application Ref 63452. Moreover, subject to approval of reserved matters, the proposal would integrate appropriately with local character, an underlying aim justifying the restrictive approach in the ASLDC in the first instance.
20. JLP policy ST18 explains that where a proposal is formulated so as to circumvent affordable housing requirements, affordable housing provision will be re-negotiated. However notwithstanding the planning history of the site, LP policy CBM2C specifies that the site is acceptable for 'about' six dwellings. Based on the illustrative plan before me, the density of development that could be achieved here from five dwellings would be broadly consistent with prevailing layout of the surrounding area. Moreover I note that the JLP specifies that the site is suitable for 'approximately 5 dwellings'.
21. As reasoned above the proposal would not accord with LP policy CBM2C or, by consequence, HSG7 in the absence of a mechanism to secure the provision of associated affordable housing. However in the context of local housing dynamics, any harm resulting from that conflict would be highly limited. That harm is outweighed by the clear direction set in respect of addressing housing provision by the NPPF, JLP and PPG coupled with the specific benefits of the proposal in that regard given the history of the appeal site.

Public open space

22. LP Policy REC5 'Public Open Space' sets out how NDDC will seek to secure public space provision associated with proposed development. Similarly, amongst other things, paragraph 83 of the NPPF supports the development of community facilities including open spaces, as does the PPG.⁹
23. Whilst not part of the development plan, the operation of LP policy REC5 is prescribed through an associated Supplementary Planning Document ('SPD') and Supplementary Planning Guidance ('SPG').¹⁰ The SPD is primarily an evidence-based document which evaluates existing open space provision in the District alongside demographics and community preferences, and translates that evidence into minimum levels of open space provision.
24. Those minimum levels are in turn converted via the SPG into requirements for individual proposals based primarily on the number of occupants of proposed dwellings. Whilst the evidence underlying the SPG is based on a detailed study

⁹ Reference ID: 37-001-20140306.

¹⁰ Respectively 'Creation and enhancement: the development of an open space strategy for North Devon supplementary planning document' dated 2001, and 'Provision of public open space, sport and recreation code of practice supplementary planning guidance' dated 2004.

of all areas of the District, the open space requirement is expressed as a general flat-rate level of expected provision.

25. With regard to the present policy context as to the threshold where planning obligations may legitimately be sought, JLP policy ST18 sets the threshold for affordable housing contributions in accordance with paragraph 63 of the NPPF (albeit there is no specific reference to tariff-style obligations). NDDC contend that a contribution of £26,907.50 towards open space provision is required to make the development acceptable, which would in their view not be a tariff-based charge with regard to CIL Reg 123(3) and to the PPG. I disagree.
26. The objectives of LP policy REC5 and of the NPPF align. However the SPD and SPG were produced some time ago, and cannot therefore reflect changes in respect of the provision of open space which have occurred since their original production. I am therefore not satisfied that policy REC5 is based on robust and up-to-date evidence on open-space provision with reference to paragraph 96 of the NPPF, or that the contribution sought by NDDC would therefore be fairly related to the development proposed.
27. Moreover the basis on which NDDC's requested contribution is calculated derives from a generalised flat-rate of expected open space provision across the District. There are minimum standards for certain open spaces to be viable, set out in SPG table 7, indicating both that a number of contributions from development are likely to be required, that associated funding is likely to be drawn from a wide area.
28. I acknowledge that it is intended that the funding sought in this respect would be towards a specific proposal. However the details of that are not yet set. NDDC explain that a project will be identified 'following consultation with the Ward Member(s) of the relevant Parish'. However there is no surety in that context about how the funds sought would be directed, or that the number of associated contributions would not exceed five with regard to CIL Reg 123(3).
29. I furthermore observed that there are various public rights of way leading into the countryside nearby, including along Skirhead Lane flanking the appeal site. The bay is also a relatively short distance away along the A399 which runs centrally through Combe Martin. There is also open space nearby at Hollands Park. In that context, even were a contribution towards open space provision appropriate in this instance, the harm arising by virtue of its absence would be very limited given the prevalence and proximity of publicly accessible formal and informal open space (including that which needs little active maintenance).
30. I have established above that the approach in LP 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 PPG in respect of tariff style contributions. I am also not of the view that the obligation sought by NDDC in respect of open space provision would meet the relevant policy or statutory tests, or its absence lead to any substantive harm.

Education

31. Notwithstanding the requirements of CBM2C, NDDC contend that in respect of education only a contribution of £3,562 is required towards transport

associated with Ilfracombe Academy, the nearest secondary school. That derives from a representation from Devon County Council reproduced in the officer report associated with the original application. It is based on one individual travelling via subsidised provision to the Academy over 190 academic days, for five years, at a daily cost of £3.75.

32. Transport provision does not necessarily fall within the ambit of infrastructure envisaged by CIL Reg 123(3). Ensuring development is supported by appropriate transport provision is axiomatic with good planning, and I accept that the proposal may generate some need to travel to secondary school provision. However it is unclear upon what policy basis such a contribution has been sought. It is also unclear how the precise calculation of £3,562 has been arrived at.
33. There is, for example, no indication of the demographic evidence that has informed establishing the number of occupants of the dwellings proposed likely to be of school age. There is no evidence before me of any existing public transport facilities here, or whether private modes of transport are typically taken in preference. It has not been demonstrated as to why such contributions should relate to a period of five years, or the basis upon which the stated daily cost of £3.75 has been calculated.
34. In that context I cannot conclude that such an obligation would be fairly and reasonably related to the development proposed, or that its absence would result in any significant planning harm (given the likely limited extent of additional demand to travel to secondary school provision). I therefore conclude that, despite the absence of planning obligations related to affordable housing, public open space, and education, the proposal would be acceptable.

Other matters

35. NDDC's fourth substantive reason for refusing permission was on account of the lack of detail as to how surface water drainage would be addressed (with regard to LP policies DVS6 and DVS7). I note the concerns of some nearby in respect of the potential for the proposal to exacerbate surface water run-off. However notwithstanding the topography, the appeal site is within flood zone 1, at low risk of flooding, and not within a critical drainage area.
36. In that context, noting the agreement reached between the appellant and the County Council to connect to a highway sewer, and given that relevant development must comply with the requirements of Building Regulations in respect of drainage, I am not of the view that adverse effects would result from the proposal in this regard (subject to an appropriately-worded condition).
37. I have noted the additional concerns of nearby residents including regarding a lack of clarity as to what is proposed, and the potential effect of the development on parking pressures, the living conditions of those nearby including during construction, and on ecology. Certain of those matters would be resolved at reserved matters stage, notably clarity on matters of detail.
38. Whilst I am sympathetic to local residents regarding parking pressures here given the proximity of Spurway Gardens to the centre of the village, both the LP and JLP support development at the appeal site. There is no robust

evidence, subject to requiring suitable on-site provision, that five additional dwellings would result in undue effects given the existing nature of the area.

39. Any effects of construction on those nearby would be temporary, as the density of development proposed would broadly accord with that nearby, and as design and landscaping would fall to reserved matters, I am not of the view that the proposal would unacceptably affect the living conditions of those nearby. Whilst certain precautions and recommendations are made in the supporting Protected Species and Habitat Survey, I am satisfied with regard to that document that no direct mitigation is required on account of the site's limited ecological value.
40. I have reviewed appeals Ref APP/L3625/W/14/3000761, APP/K3605/W/16/3146699 and APP/X1118/W/16/3161403 brought to my attention. All pre-date the current NPPF, progress of the JLP at examination, and relate to smaller-scale development where there is no indication of those sites being allocated. Indeed the first two are outside of the District. As such direct comparisons cannot be drawn. Therefore neither those cases, nor any other matters, alter my reasoning in respect of the main issue in this case.

Conclusion

41. For the above reasons, having taken all other relevant matters into account, the other material considerations in favour of the proposal justify taking a decision which is not in accordance with certain provisions of the development plan. Therefore, having had regard to the development plan as a whole, the JLP, and to the approach in the NPPF and the PPG, I conclude that the appeal should be allowed subject to the conditions below.

Conditions

42. It is necessary to impose conditions limiting the life of the planning permission, setting out requirements for the reserved matters in accordance with relevant legislation, and requiring compliance with supporting plans in the interests of certainty. Several conditions proposed by NDDC are, however, unnecessary as they relate to details associated with reserved matters.¹¹ Nevertheless, conditions are required in respect of securing appropriate parking and drainage provision; the former to minimise the effect of the proposal relative to existing pressures in this location, and the latter to ensure that resultant surface-water run-off is suitably attenuated in accordance with LP policies DVS6 and DVS7.
43. As the appeal site lies in an area where archaeological remains are potentially present, with regard to LP policy CBM2C and NPPF paragraph 187 I have imposed a condition requiring that any such remains are identified and recorded. That condition, and that related to drainage, must necessarily apply before any development is undertaken, as any has the potential to disturb the existing characteristics of the site in those respects. In imposing conditions I have had regard to the tests in the NPPF, the PPG and relevant statute. I have accordingly amended the wording of certain conditions proposed by NDDC without affecting their aim.

Thomas Bristow
INSPECTOR

¹¹ Those NDDC have numbered in their statement of case 3, 6 and 10 which relate to landscaping, 5 which relates to appearance and layout, and 7 which relates to access.

SCHEDULE OF CONDITIONS

- 1) Details of the access, appearance, landscaping, layout and scale of the development hereby permitted (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 three years from the date of this decision, and the development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.
- 3) The development hereby permitted shall be carried out in accordance with approved plans 14011/L1 and 17254-051 Revision B, except in respect of any details related to the reserved matters.
- 4) Notwithstanding conditions 1, 2 and 3, no dwelling hereby permitted shall be occupied until a parking scheme has been implemented in accordance with details previously agreed in writing by the local planning authority (which shall include formal and informal parking space provision). Once implemented, the parking scheme shall thereafter be maintained as agreed.
- 5) No development hereby permitted shall be undertaken until a drainage scheme has been agreed in writing by the local planning authority (which shall include details of all measures to control and manage surface water discharge from the site such that none drains onto the highway). The agreed drainage scheme shall be implemented before any dwelling hereby permitted is first occupied, and thereafter retained and maintained in accordance with the details thus agreed.
- 6) No development hereby permitted shall be undertaken until a programme of archaeological work has been agreed in writing by the local planning authority (including details of how any relevant archaeological features identified will be recorded). The development hereby permitted shall be undertaken in accordance with the programme of archaeological work thus agreed.