



## Appeal Decision

Site visit made on 6 November 2018

**by K Taylor BSc (Hons) PGDip MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 27 December 2018**

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**Appeal Ref: APP/K1128/W/18/3205992**

**Land east of Creek Close, Creek Close, Frogmore TQ7 2NX**

- 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 3880/17/OPA, dated 10 November 2017, was refused by notice dated 14 June 2018.
  - The development proposed is described as "outline application (with all matters reserved) for the erection of 8 dwellings (including affordable housing), access and associated landscaping".
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### Decision

1. The appeal is allowed and planning permission is granted for the erection of 8 dwellings (including affordable housing), access and associated landscaping at land east of Creek Close, Creek Close, Frogmore TQ7 2NX in accordance with the terms of application Ref 3880/17/OPA, dated 10 November 2017, subject to the conditions in the attached schedule.

### Application for costs

2. An application for costs was made by The Perraton Family against South Hams District Council. This application is the subject of a separate decision.

### Procedural matters

3. The application was made in outline with all matters reserved. Indicative layout plans have been submitted as well as an indicative preliminary highway layout. I have treated this as indicative information.
4. In my formal decision I have amended the wording of the description of the development as it is not necessary to make reference to the outline nature of the consent or that all matters are reserved.

### Main issue

5. The main issue is the effect of the development on the character and appearance of the area, including whether it would conserve and enhance the natural beauty of the South Devon Area of Outstanding Natural Beauty (the AONB).

### Reasons

#### *Character and appearance*

6. The appeal site is located within the AONB as is a significant portion of the village, primarily the land located to the south side of the A379. The site is a

small area of a larger field. It is roughly rectangular in shape and sits to the immediate rear of Creek Close and housing in Winslade Close. Creek Close is a recent development containing 9 dwellings and a vacant area of land which has planning permission for the erection of 2 further dwellings. Winslade Close is a more established development consisting of bungalows. The appeal site forms a small section of the lower valley slope to the south side of Frogmore. Beyond the southern extent of Creek Close and the site the land rises up significantly.

7. An application for 46 dwellings, but revised to 28 houses, was submitted, refused planning permission, with the appeal subsequently dismissed<sup>1</sup>. The current appeal site was included in this previous scheme, but it also covered a much more extensive area to the east and north east. Within the appeal decision the Inspector concluded that the development would cause harm to the character and appearance of the area and consequently that it would fail to preserve and enhance the natural beauty of the AONB. In its appeal statement the Council has made significant reference to this appeal decision as has the Parish Council and several other interested parties.
8. Sections of the larger site, associated with the previous appeal, are visible from a number of locations. This includes parts of the A379, some of the minor surrounding roads and sections of the footpaths by Frogmore Creek and heading south east from East Charleton. The previous appeal scheme would have represented a significant incursion into the undeveloped lower slopes of the valley.
9. The current appeal scheme relates to a much smaller site, less than half a hectare, compared to around 2.5 hectares. The scale of the site is such that the effect on the views, and therefore the landscape setting of Frogmore, would be much more limited. Primarily this would be confined to a small number of additional roof forms being visible. The development would be seen in the context of the existing nearby housing and the buildings would appear tucked in behind these properties, rather than being a significant extension of the village along the lower valley slopes.
10. Mitigation measures would be important to ensure the development successfully integrated into the landscape and the form of the village. This would include the location of the open space, the siting and orientation of the buildings and landscaping. These are detailed considerations for any reserved matters submissions. However, I am satisfied that a suitable scheme could be achieved. In view of the modest scale of the proposal and its particular location I consider that the development would not result in harm to the character and appearance of the area and that it would not fail to preserve and enhance the natural beauty of the AONB.
11. The National Planning Policy Framework (the Framework) states that planning permission for 'major development' in an AONB should be refused other than in exceptional circumstances and where the development is in the public interest. Having regard to footnote 55 of the Framework 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. There is nothing in the Framework to suggest that, in reaching a view as to whether the scheme amounts to 'major development', a proposal in question should be considered

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<sup>1</sup> LPA ref: 1768/16/OPA & Appeal ref: APP/K1128/W/17/3185418

alongside other nearby developments. In fact the development is referred to in the singular in the footnote.

12. I accept that there may be occasions where sites have been artificially split to avoid various schemes being categorised as 'major development'. Therefore, I am not convinced that there would never be a scenario where it is reasonable to take account of other development proposals. In this case, the previous permission for 10 houses (subsequently 11) was initially submitted and approved a considerable amount of time ago (October 2014 and March 2015 respectively). It was promoted by a different applicant and the basis on which permission was sought was different; being an affordable housing led scheme. I also observed that 9 of the homes had been completed and appeared to be occupied. When I consider all these factors together it is clear to me that the appeal scheme should be considered in isolation.
13. Frogmore is a small settlement; however it is not so small that 8 dwellings would significantly increase its size. The land take would be modest compared to the size of the village and the site would also be well contained. I have identified that there would not be a significant adverse effect on the purposes of the AONB. It follows that the proposal is not 'major development' for the purposes of paragraph 172 of the Framework.
14. For the reasons given above the development would not result in harm to the character and appearance of the area nor would it fail to conserve and enhance the natural beauty of the AONB. The development would accord with Policies CS9 of the South Hams Core Strategy and DP2 of the South Hams Development Policies Development Plan Document (the DP). Collectively these Policies give great weight to the conservation and enhancement of AONBs, seek to ensure that development reflects local distinctiveness and conserves and/or enhances landscape character. There would also not be conflict with the high status of protection and the great weight that should be given to conserving and enhancing the landscape and scenic beauty of AONBs as outline in the Framework.
15. Although I only give these limited weight, Policies DEV24 and DEV27 of the emerging Plymouth & South West Devon Joint Local Plan (the eJLP) have similar aims to those in the above policies and the Framework. For the same reasons there would not be conflict with them. There would also not be conflict with Policy TTV31 of the eJLP in so far as it seeks to protect the special characteristics of the countryside.

#### *Other matters*

16. There is no dispute that the Council is unable to demonstrate a five-year supply of deliverable housing sites. As such, policies which are important for determining the application are out-of-date. This means that planning permission should be granted unless: (i) the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed or (ii) 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 (the latter is often referred to as the 'tilted balance').
17. In view of my finding on the first main issue there would not be conflict with the policies within the Framework which seek to protect the AONB and so this

does not provide a clear reason for refusing the development. The tilted balance therefore applies.

18. The site is located outside of the established Frogmore development boundary and so the development would not accord with the adopted strategy for the provision of housing. This would include Policy DP15 of the DP and TTV31 of the eJLP. For a small settlement, Frogmore has a number of services and facilities as well as bus stops. However, meeting the day-to-day needs of residents would mean many would be heavily reliant on private vehicles. The development would not therefore perform well against the requirement in the Framework that there should be appropriate opportunities to promote sustainable transport modes. However, I note that development is permitted in this village within the development boundary and any housing in such locations would be similarly affected by this limited accessibility. I therefore give limited weight to the harm associated with this.
19. The eJLP is currently being examined, if it is found to be sound there would need to be a suitable supply of deliverable housing sites. However, the new plan is not adopted and so currently there is not a five-year supply of deliverable housing sites. Even if there is a reasonable prospect that this situation may be rectified in the near future, I must base my decision on the situation at the current time. I note the suggestion that other sites, potentially suitable for housing, outside of the AONB may exist. This is not an overriding issue in considering an individual planning proposal which must be decided on its own merits. In this respect my attention has also been drawn to the recent appeal decision for this and adjoining land. That scheme was significantly larger and it would have had an adverse effect of the character of the area and so the balance of considerations would have been different.
20. New housing has been provided in the Parish, however the housing supply situation, and the application of the tilted balance, needs to be considered on a district wide basis. It is also apparent that housing policies in the eJLP will set minimum and not maximum housing numbers for each identified settlement. The evidence also indicates that there is a higher ratio of affordable housing in the Parish than is common across the district. Although I have taken account of the comments from the Parish Council on this matter, the evidence from the Council's affordable housing advisors is that there is still some need within the Parish. In any event, the local connection, as set out in the planning obligation, is not specific to the Parish and so the properties could meet a wider need.
21. The provision of 8 dwellings would make a small, but important, contribution to meeting housing need across the district including that related to affordable housing. There would be economic and social benefits associated with this. The adverse impacts of this development relate to a lack of compliance with the strategy for the location of new housing in the development plan and the associated limitations in respect of accessibility. However, for the reasons I have given above, I only give limited weight to the latter. These adverse impacts would not significantly and demonstrably outweigh the benefits of the development when it is assessed against the Framework taken as a whole. This is a weighty material consideration.
22. I am aware that as well as the eJLP, a neighbourhood plan is being prepared. I also note the comments in respect of the lack of support for the development by many local residents. The proposal is not for development of a substantial

scale and granting planning permission would not undermine the plan making process. As such this is not a situation where prematurity would be a justifiable reason for the refusal of planning permission.

23. The effect of the development on school places and associated transportation matters could be address by the provisions in the planning obligation. The development would result in an increase in vehicle movements. This would have a very modest effect on the road network and it would not result in a severe impact which is the test within the Framework for refusing permission on these grounds.
24. Surface water drainage and sewerage are matters can be dealt with by conditions. There is evidence that problems arose during the construction of the existing development at Creek Close. The Council will be aware of this and can have due regard to it in considering if any surface water drainage scheme, including those related to the construction period, is suitable. Appropriate ecological mitigation can be secured through planning conditions and the planning obligation, and other matters of detail, such as the effect from lighting could be adequately controlled through the consideration of reserved matters applications. The site is of a sufficient size to accommodate the dwellings without an unacceptable impact on the living conditions of neighbouring residents. An effect on property value is not a substantive issue in considering a planning proposal.
25. Concerns have been raised that this proposal may set a precedent for the further development of land within the appellants' ownership. Each case must be considered on its individual merits and harmful development, even if it is proposed in a piecemeal fashion, can be resisted. Comments have also be made in respect of the, as yet unconstructed dwellings, on Creek Close, those matters do not have any bearing on the planning merits of the appeal scheme.

## **Conclusion**

26. The proposal would not accord with the development plan, however the Council's current lack of a five-year supply of deliverable housing sites and the application of the tilted balance, as set out in the Framework, are significant material considerations. The adverse impacts of the development would not outweigh the benefits. This leads me to conclude that a decision, which is contrary to the development plan, is justified. The appeal should be allowed.

## **Planning obligation and conditions**

27. The appellant's have submitted a signed unilateral undertaking under the provisions of section 106 of the Town and Country Planning Act 1990 (as amended). This includes provision for: school infrastructure and school transport contributions, agreement and provision of highway works, provision of 2 of the dwellings to be affordable homes, a landscape and ecology management plan, the provision and maintenance of an equipped play area/sports area, Cirl Bunting mitigation measures, the management and maintenance of SUDS, the provision of a management company, and agreement of the boundary treatment between the site and 6 Creek Close.
28. The obligations in respect of school infrastructure, transport contributions, affordable housing, the provision of open space/a play area are necessary so that these matters are dealt with appropriately and so that the development

- would accord with the relevant requirements of the development plan. A management company and the maintenance of the SUDS would be necessary to ensure the long term maintenance of this infrastructure. These obligations are directly related to the development including in terms of scale and kind.
29. The Cirl Bunting mitigation measures and the provision of a landscape and ecology management plan are necessary in the interest of biodiversity. The details of the works to the highway and the boundary with 6 Creek Close will ensure such matters are adequately addressed and so these are necessary and related to the development including in terms of scale and kind.
30. I have imposed a condition requiring the submission of a construction management plan to ensure that the development does not unduly affect the living conditions of the occupiers of nearby dwellings. I have significantly reduced the requirements to that suggested by the Council. The scale of the development is very modest and the construction would not have a significant effect on the wider highway network. Therefore, I have not included matters related to this in the condition. To be effective this has to be a pre-commencement condition.
31. So that these matters are dealt with adequately it is necessary to secure details of surface water drainage both during the development phase and then subsequently as well as the means for dealing with sewerage. I have also simplified the wording of the surface water drainage condition as this would still ensure the Council could approve a suitable scheme. As such works will be carried out as the first part of the development, to be effective it is necessary that these conditions are worded to be pre-commencement.
32. To prevent nesting birds being disturbed a condition is necessary to control works affecting habitat suitable for nesting. In the event that unexpected contamination is found a condition to ensure this is adequately mitigated is also necessary.
33. A condition to specify the drawing number is not necessary as all matters are reserved. It is not necessary to have a condition outlining a number of matters which should be included in the reserved matters submissions; this would either be implicitly necessary or the details are to be controlled by separate conditions. Similarly, it is not necessary to control highway and landscaping matters at this stage as both are reserved matters. The existing landscaping is limited to some boundary planting; any protection necessary for this can also be adequately controlled when the landscaping reserved matter is considered. A condition to secure a landscape and ecology management plan is not necessary as this forms part of the planning obligation.

*K Taylor*

INSPECTOR



### **Schedule of conditions**

1. Details of the access, 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 approval of the last of the reserved matters to be approved.
4. No development shall commence until a construction management plan has been submitted to and approved in writing by the local planning authority. It shall specify the following:
  - the timetable of the works;
  - daily hours of construction, including construction traffic and deliveries;
  - facilities for the storage of plant, machinery, construction materials, and construction worker parking;

The development shall be carried out in accordance with the approved details.

5. No development shall commence until details of a surface water drainage management plan for the construction period has been submitted to and approved in writing by the local planning authority. The temporary surface water drainage management system shall be constructed in accordance with the approved details for the duration of the construction period.
6. No development shall commence until details of the scheme for the disposal of sewerage has been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
7. No development shall commence until details of a surface water drainage scheme including future maintenance provisions has been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details and thereafter retained and maintained as approved.
8. Works to potential bird nesting habitat shall not be undertaken within the bird nesting season (March to August inclusive) unless a suitably qualified ecologist confirms the absence of nesting birds.
9. If during the development, contamination not previously identified is found to be present at the site then no further development (unless otherwise agreed in writing by the local planning authority) shall be carried out until details of an investigation and risk assessment and, where necessary, a remediation strategy and verification plan, which details how the unsuspected contamination shall be dealt with, has been submitted to and approved in writing by the local planning authority. Where relevant, following the completion of the measures identified in the approved remediation strategy and verification plan, a verification report demonstrating completion of the remediation works and their effectiveness shall be submitted to and approved in writing by the local planning authority. No dwelling shall be occupied until such written approval has been given.