
Appeal Decision

Site visit made on 5 August 2019

by Robert Parker BSc (Hons) Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 August 2019

Appeal Ref: APP/Y1138/W/18/3214685

Land off Meadow Park, Willand, Devon (NGR 303288 110467)

- 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 Gallagher Estates Ltd, Mr Michael Webber & Ms Sally Albright against the decision of Mid Devon District Council.
 - The application Ref 18/00175/MOUT, dated 24 January 2018, was refused by notice dated 9 October 2018.
 - The development proposed is residential development of up to 125 dwellings, with public open space, landscaping and associated infrastructure.
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Decision

1. The appeal is allowed and outline planning permission is granted for residential development of up to 125 dwellings, with public open space, landscaping and associated infrastructure at Land off Meadow Park, Willand, Devon (NGR 303288 110467) in accordance with the terms of the application, Ref 18/00175/MOUT, dated 24 January 2018, subject to the conditions set out in the attached schedule.

Procedural Matters

2. The application is submitted in outline with all matters reserved. I have treated the Concept Masterplan as indicative, although I note that planning permission has already been granted for the primary vehicular access off Meadow Park.
3. The parties have produced a Statement of Common Ground (SoCG) which identifies the matters in dispute and those upon which there is agreement. Additionally, two signed unilateral undertakings (UU) were submitted in counterpart form during the appeal process. I shall return to this later.

Main Issue

4. The main issue is whether residential development of the scale proposed is appropriate, having regard to the development plan strategy for the location of housing, the National Planning Policy Framework (the Framework) and the level of services and facilities that would be available to future occupiers of the scheme.

Reasons

Compliance with development plan policy

5. The appeal site comprises a 6.4 ha parcel of agricultural land located to the south-west of the built-up area of Willand. In policy terms, the site lies in the countryside, immediately outside of the settlement limit boundary.
6. Of the policies cited on the decision notice, Policy COR 12 of the Mid Devon Core Strategy (2007) (CS) is a useful starting point. This seeks to concentrate development at Tiverton, Cullompton and Cridton, with a limited role for Bampton. The policy states that other settlements will have only very limited development that is required to meet local needs and promote rural regeneration.
7. Although not referenced in the refusal reason, CS Policies COR 17 and COR 18 are also relevant. Policy COR 17 designates Willand as a 'village' where development will be limited to minor proposals within the defined settlement limits and to allocations for: affordable housing meeting a local need; small scale employment and tourism; services and facilities serving the locality; and other very limited development which enhances community vitality or meets a local social or economic need. The settlements within this tier of the hierarchy are recognised within the policy as having some local facilities and employment and access to public transport. Policy COR 18 seeks to strictly control development in the countryside; the categories of permissible development in the countryside include affordable housing for local needs but not market housing.
8. The appeal scheme would include an element of affordable housing, but the scheme is not solely directed at meeting local housing needs. It is therefore reasonable to conclude, having regard to the above policies, that the proposed scheme of 125 dwellings outside of the settlement boundary of Willand would conflict with the development plan strategy for the location of housing. S38(6) of the Act requires that planning applications be determined in accordance with the development plan, unless material considerations indicate otherwise.

Housing land supply position

9. At the point the planning application was determined the Council was unable to demonstrate a five-year supply of deliverable housing sites. However, it now calculates that the District has a 7.58 year supply against an annual need for 357 dwellings per annum, applying the Government's standard method and taking account of the Housing Delivery Test results. This figure is not being contested by the appellant.
10. Notwithstanding the housing supply position, it is common ground that the adopted development plan is out of date and only limited weight can be attached to those of its policies addressing the scale and distribution of housing development, including policies designed to prevent development in the countryside beyond existing settlement boundaries. It is also agreed between the parties that the tilted balance set out within paragraph 11(d)(ii) of the Framework is engaged. This states that where the policies which are most important for determining the application are out-of-date, permission should be granted unless 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.

Emerging policy

11. As part of its Local Plan Review the Council has allocated part of the site for 42 new dwellings. The emerging plan is still under examination, but the Inspector has not raised any specific concerns regarding the allocation. However, there are remaining concerns regarding the housing trajectory and the authority's ability to sustain a five-year housing land supply in the early years of the plan. I note that one of the options mooted in the Inspector's Post-Hearings Advice Note is to consider increasing the scale of development on existing proposed allocations, with direct reference to the Willand site as an example.
12. Until all objections have been resolved and the Inspector's final report received, the weight that can be attached to the emerging plan is limited. However, the Council's proposal for a site allocation in Willand is a clear recognition that in order to meet its aspirations for housing growth, not all development can take place within the confines of settlements.

Services and facilities

13. The Council acknowledges that Willand is a second tier settlement within Mid Devon following the four main towns of Tiverton, Cullompton, Crediton and Bampton. In this regard, it expects that Willand will contribute to the District's housing land supply over the plan period and that development at Willand is consistent with the current and emerging spatial strategy (reflected in the housing allocation being made in the emerging Local Plan). As such, there is an explicit acceptance within the SoCG that Willand is a sustainable settlement and a sustainable location for further development in Mid Devon.
14. Moreover, it is common ground that Willand contains a range of services and facilities, including shops, petrol filling station, pharmacy, doctor's surgery, village hall, public house, playing fields, pre-school and primary school. A small but well stocked Co-operative supermarket has recently opened on the business and industrial site to the north of the village; this area provides numerous other employment opportunities.
15. No objection is being raised to the proposed development in respect of its general accessibility or location. Whilst the services and facilities in Willand are dispersed, all are within safe walking and cycling distance of the appeal site. Bus stops are located on and close to the boundaries of the site with regular services to Tiverton, Cullompton and Exeter. A dedicated cycle route provides access to Tiverton Parkway station.
16. The reason for refusal references the scheme's likely effects on the long-term sustainability and social cohesion of the local community. This is a nebulous and undefined concept. However, from my reading of the evidence the concerns boil down to the absence of any improvements to infrastructure to offset the increase in population. It is argued that Willand has already accommodated 54 dwellings on 'windfall sites' over the current plan period, together with 35 affordable homes on an exception site. This is in addition to the 42 new dwellings that would be built under the emerging Local Plan allocation.
17. The Council estimates that, when taken with other recent developments, the proposal would lead to an 11 percent increase in population. Put another way, there would be an additional 83 dwellings on top of the 131 dwellings already built during the current plan period or committed in the emerging Local Plan.

Whilst I note the understandable concerns regarding cumulative impacts, there is no substantive evidence before me to demonstrate that existing services and facilities are under pressure, or that they would not have the capacity to accommodate the residents of the proposed development.

18. The appellant has engaged with local community representatives to identify what could be done to mitigate the (unquantified) impact of the proposals. The submitted UU would secure monies towards: the provision of studio facilities at Willand Primary School¹; the Willand Health and Community Centre project for the fitting out that part of the building to be used for a mixed community use to include memory café, day centre and other community uses²; upgrading the Jubilee Field BMX/Skate Park and/or other recreation/teen facilities in the village; and improvements to the frequency of the No.1 bus service. Unlike the obligations relating to open space and equipped children's play within the site, which are principally intended to serve residents of the development, the other planning obligations would benefit the entire community. This needs to be factored into the balance.
19. CS Policy COR 1 sets out the principles for achieving sustainable communities. Amongst other things, this policy is supportive of proposals which enhance the self-sufficiency and vitality of communities, by providing neighbourhoods and settlements with a vibrant mix of flexible and compatible uses, services and community facilities. Notwithstanding the expectations for a lesser quantum of development in Willand within adopted and emerging policy, the proposal would balance a proportionate level of housing growth with modest improvements to services and facilities. Furthermore, there is good availability of sustainable transport options in Willand, which would be further enhanced as part of the appeal scheme. Accordingly, there would be no conflict with CS Policies COR 1 and COR 9 insofar as they seek to reduce the need to travel by car.

Affordable housing

20. The Council contends that outstanding local housing need has already been addressed by other schemes or commitments in the village, and that the affordable housing offered by the appeal scheme is not required. However, it does not contest figures provided by the appellant which indicate that there is a substantial deficit of affordable housing at a district-wide level; the delivery of up to 44 affordable homes on the site, in line with development plan policy, is accepted within the SoCG to be a benefit of the scheme. Although it is argued that occupiers of the proposed affordable homes would commute out of the settlement, due to their lack of family connections with Willand, it is equally likely that they would find employment locally, use local facilities and integrate into village life. Even if they did choose to travel further afield, there are sustainable transport options to do so.

Unilateral Undertaking

21. The Council has provided information which demonstrates that the obligations within the UU 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. They are not caught by the pooling

¹ This project already has planning permission and is awaiting funding; the scheme would provide 100% funding.

² The s106 includes provision for the monies to be put to an alternative community facilities project, should this project not proceed.

restrictions and therefore comply with the provisions of Regulations 122 and 123 of the Community Infrastructure Levy Regulations 2010.

Other Matters

22. Residents have raised concerns in relation to traffic generation, queuing at nearby motorway junctions and impacts on road safety. However, there is no objection from the Highway Authority, and I note that a previous Inspector found that there would be no harm in connection with a larger proposal of up to 259 dwellings. As such, there are no highway reasons to dismiss the appeal.
23. Whilst I note the comments regarding the impact on local schools, the Education Authority has confirmed that there is currently capacity at the nearest primary and secondary schools for the number of pupils likely to be generated by the proposed development.
24. The appeal site is in Flood Zone 1. The parties are agreed that an acceptable drainage solution can be achieved to ensure that flood risk on the site and elsewhere is managed. The Lead Local Flood Authority raises no objection to the scheme, subject to the imposition of conditions. There is no substantive information to lead me to a different view.
25. The water authority is content for permission to be granted subject to the condition that the development be connected to the public foul or combined sewer. There is no firm evidence to demonstrate that the local sewer network has capacity issues that cannot be overcome.
26. Although there would be a loss of farmland, the appeal site is categorised as sub-grade 3b (moderate quality) and it is therefore not best and most versatile agricultural land. This factor does not weigh against the scheme.
27. The impact of motorway noise is a material consideration, but an acceptable living environment for future residents of the scheme can be created using appropriate noise mitigation measures which can be secured by condition.
28. I have taken account of all other matters raised in representations, including the loss of views, the impact on the rural feel to the village and community dynamic, and issues of precedent, but these do not alter my conclusions on the main issue.

Planning Balance

29. The proposal conflicts with CS Policies COR 12, COR 17 and COR 18. Those policies directly influence the scale and distribution of housing development and therefore they are out of date and attract limited weight. The application falls to be determined against the presumption in favour of sustainable development which is set out in Policy DM1 of Mid Devon Local Plan Part 3: Development Management Policies (2013) (LP3) and the Framework. There is no dispute that the tilted balance should apply.
30. The delivery of 125 new homes would make an important contribution to meeting the Government's stated objective to significantly boost the supply of new homes. The social benefits of providing market and affordable housing attract considerable weight in favour of granting permission, notwithstanding the Council's ability to demonstrate in excess of five years' worth of deliverable housing sites.

31. The Council has drawn my attention to a previous dismissed appeal in relation to a scheme of 259 dwellings on land which incorporated the appeal site. In that decision, the Inspector reduced the weight given to the benefits of housing delivery on the grounds that the scale of the development would unbalance the settlement. However, the current proposals are less than half the size and they put forward an enhanced package of measures to mitigate the impact of the development on local services and facilities and improve those same services and facilities for existing residents. There have also been enhancements to the retail offer since that earlier appeal. Consequently, I have found no conflict with the principles set out in CS Policies COR 1 and COR 9.
32. The proposal would create significant amounts of employment during the construction phase, and it would support the construction industry. Thereafter, residents of the scheme would boost the local labour force and provide extra spending power in the local economy, in addition to generating additional New Homes Bonus and Council Tax revenues. The commercial viability of services such as the public house and supermarket would also be bolstered.
33. Against the above benefits I must balance the adverse impacts. The Council has been unable to persuade me that any material harm would arise from the scheme's impact on local services and facilities. The parties agree that there would be minor localised harm to the landscape, but the level of harm is not significant when considering the location of the site adjacent to the existing urban boundary of Willand and the M5 motorway. This factor is neutral in the overall planning balance. The Council has not raised any other technical issues or concerns which weigh against the proposal.
34. The proposal would conflict with the development plan in relation to the scale of housing provision planned in Willand. The Framework makes clear that the planning system should be genuinely plan-led and therefore this should be treated as harm. However, the adverse impacts in this case do not significantly or demonstrably outweigh the benefits of the scheme. As such, the proposal would constitute sustainable development in the terms of CS Policy COR 1 and the Framework. This is a material consideration of considerable weight which justifies a decision otherwise than in accordance with the development plan.

Conditions

35. Suggested planning conditions were set out in the SoCG. I have considered the conditions having regard to paragraph 55 of the Framework and advice contained in the Planning Practice Guidance. I have adjusted the wording of some conditions to improve precision, and combined others to remove duplication.
36. Given the outline nature of the application, conditions are necessary relating to commencement and the submission of the reserved matters. This is to comply with the requirements of planning legislation. In the interests of certainty, I have added a condition to control the maximum number of dwellings.
37. To prevent flooding, I have attached conditions to require the submission of a temporary surface water drainage management plan for the duration of the construction period, and a Sustainable Urban Drainage scheme which shall be implemented and maintained for the lifetime of the development. A separate condition is needed to ensure that foul water discharge takes place to the public foul or combined sewer.

38. It is important that the construction process takes place without significant detriment to the living conditions of existing residents, the operation of the highway network and the environment. Accordingly, conditions are necessary in relation to the phasing of the scheme and to require the submission of a Construction Management Plan and Waste Audit Statement. To protect the amenity value of mature trees on the site, I have imposed a condition to secure an Arboricultural Method Statement and Tree Protection Plan.
39. The M5 motorway is a potential source of noise nuisance for future occupiers of the development. A condition is therefore necessary to secure a noise mitigation scheme for approval by the local planning authority in consultation with Highways England. The scheme will need to incorporate details of any acoustic fencing and bunding, together with the specification for any planting.
40. To ensure that the development has a satisfactory appearance and makes adequate provision for open space and ecological mitigation and enhancement, conditions are needed to stipulate what should be included in the reserved matters submissions. This includes details of boundary treatments, existing and proposed site levels, finished floor levels and materials, details of all areas of public open space (including a strategy for the management and maintenance thereof) and an ecological management plan.
41. In the interests of highway safety, I have attached a condition to ensure that the access and site compound have been constructed prior to any other development commencing. Conditions are also required to secure the widening of the footway along the B3181 and the completion of relevant highway infrastructure before the occupation of each plot. The proposal would directly affect a public footpath and lead to its increased use. It is therefore reasonable to impose a condition seeking an access scheme to ensure that the development mitigates for its impact on this route.
42. The Council cites LP3 Policy DM8 in relation to a condition on electric vehicle charging points. The suggested condition wording goes beyond the standards set out in the development plan, but this can be justified as part of a package of measures intended to encourage sustainable transport modes.
43. Finally, the suite of contaminated land conditions is justified by the recommendations of the appellant's Geo-Environmental Report which identifies low to moderate contamination risk.

Conclusion

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

Robert Parker

INSPECTOR

SCHEDULE OF CONDITIONS

1. The development hereby permitted shall be limited to a maximum of 125 dwellings.
2. Before any part of the development hereby permitted is begun, detailed drawings of the access, layout, scale and appearance of the buildings, and the landscaping of the site (hereinafter called the Reserved Matters) shall be submitted to and be approved in writing by the local planning authority.
3. Application(s) for approval of all the Reserved Matters shall be made to the local planning authority before the expiration of three years from the date of this permission.
4. The development hereby permitted shall be begun either before the expiration of three years from the date of this permission, or before the expiration of two years from the date of approval of the last of the Reserved Matters which have been approved, whichever is the later.
5. No development shall commence until a Sustainable Urban Drainage Scheme and long term management and maintenance plan have been submitted to and approved in writing by the local planning authority. The Scheme shall be informed by a programme of percolation tests, which shall be carried out in accordance with BRE Digest 365 Soakaway Design (2016), and be in accordance with the principles set out in the Flood Risk Assessment (Report Ref. B15279-FRA-01 v8 dated Jan 2018). The methodology for the percolation tests shall be first agreed in writing by the local planning authority, in consultation with Devon County Council as the Lead Local Flood Authority.

The Sustainable Urban Drainage Scheme shall include a full drainage masterplan and associated drainage calculations together with a timetable for implementation of the scheme. No additional flows shall be accepted into the highways drainage associated with the strategic road network in line with DfT Circular 02/2013 (paragraph 50).

The development shall be constructed, and the Sustainable Urban Drainage Scheme provided, maintained and managed in accordance with the approved details.

6. No development shall commence until a temporary surface water drainage management plan, to demonstrate how surface water runoff generated during the construction phase will be managed for the full construction period, has been submitted to and approved in writing by the local planning authority. The plan must satisfactorily address both the rates and volumes, and quality, of the surface water runoff from the construction site and must also include details of how eroded sediment will be managed to prevent it from entering the permanent surface water drainage management system and include a timetable for the implementation of the management plan. Once approved, the management plan shall be implemented in accordance with the approved details.

7. No development shall commence until an Arboricultural Method Statement and Tree Protection Plan, to include engineering details for any areas of no-dig construction, has been submitted to and approved in writing by the local planning authority. The development shall be carried out in strict accordance with the approved details.
8. No development shall commence on site until a Construction Management Plan has been submitted to and approved in writing by the local planning authority. The plan shall include, but shall not necessarily be limited to, details of the following:
 - a) parking for vehicles of site personnel, operatives and visitors;
 - b) loading and unloading of plant and materials;
 - c) storage of plant and materials;
 - d) programme of works (including working hours and measures for traffic management);
 - e) provision of any hoarding or temporary fencing;
 - f) measures to control construction noise, the emission of dust and the deposit of materials on the public highway; and
 - g) measures to protect the users of any public rights of way directly affected by the development.

The development shall be carried out strictly in accordance with the approved Construction Management Plan.

9. No development shall commence on site, other than in relation to a, b, c & d of this condition, until:
 - a) The access road into the site has been laid out, kerbed, drained and constructed up to base course level for the first 20 m back from its junction with the public highway;
 - b) The ironwork has been set to base course level and the visibility splays required by this permission laid out;
 - c) The footway on the public highway frontage required by this permission has been constructed up to base course level; and
 - d) A site compound and car park have been constructed to the written satisfaction of the local planning authority.
10. No development shall commence until a noise mitigation scheme has been submitted to and approved in writing by the local planning authority (in consultation with Highways England on behalf of the Secretary of State for Transport). The submitted scheme shall include details of any proposed acoustic fencing and bund, together with a specification for any planting on the western site boundary (including planting for any bund). There shall be no bunding constructed within 3m of the M5 boundary fence.

Development shall be carried out in accordance with the approved details prior to occupation of any part of the development, or in accordance with an alternative timetable to be agreed in writing with the local planning authority.

11. No development shall commence until a scheme for Electric Vehicle Charging Points ("EVCP") has been submitted to and approved in writing by the local planning authority, such scheme to include provision of at least a single EVCP for each dwelling comprised in the development which has a private driveway or garage within its curtilage ("Relevant Dwelling"). The installation of the EVCPs shall be completed in accordance with the approved scheme prior to first occupation of each Relevant Dwelling.
12. No development shall commence until an access scheme has been submitted to and approved in writing by the planning authority, in liaison with the Devon County Council Public Rights of Way Team. Such scheme shall include provision for the design of public rights of way routes and their surfacing, widths, gradients, landscaping and road crossing points. Development shall be carried out in accordance with the approved details.
13. No development shall commence until an investigation and risk assessment (which shall be in addition to any assessment provided with the planning application) has been completed in accordance with a scheme to assess the nature and extent of any contamination on the site – whether or not it originates on the site. The contents of the scheme are subject to the approval in writing of the local planning authority. The investigation and risk assessment must be undertaken by competent persons and a written report of the findings must be produced. The written report is subject to the approval in writing of the local planning authority. The report of the findings must include:
 - a) a survey of the extent, scale and nature of contamination;
 - b) an assessment of the potential risks to:
 - human health,
 - property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes,
 - adjoining land,
 - groundwaters and surface waters,
 - ecological systems,
 - archaeological sites and ancient monuments;
 - c) an appraisal of remedial options, and proposal of the preferred option(s).

This must be conducted in accordance with DEFRA and the Environment Agency's '*Model Procedures for the Management of Land Contamination, CLR 11*'.

14. No development shall commence until a detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment has been submitted to and approved in writing by the local planning authority. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.

15. No development shall commence until the approved remediation scheme has been carried out in accordance with its terms. The local planning authority must be given two weeks written notification of commencement of the remediation scheme works. Following completion of measures identified in the approved remediation scheme, a verification report that demonstrates the effectiveness of the remediation carried out must be produced and approved in writing by the local planning authority.
16. The development hereby approved shall not be carried out otherwise than in accordance with a phasing programme which shall previously have been submitted to and approved by the local planning authority in writing.
17. No dwelling shall be occupied until the off-site highway improvements to widen the footways along the B3181, shown on drawing number A-012 Rev: P1, have been carried out in accordance with details which shall have been first submitted to and approved in writing by the local planning authority.
18. The occupation of any dwelling in an agreed phase of the development shall not take place until the following works have been carried out:
 - a) The spine road and cul-de-sac carriageway including the vehicle turning head within that phase shall have been laid out, kerbed, drained and constructed up to and including base course level, the ironwork set to base course level and the sewers, manholes and service crossings completed;
 - b) The spine road and cul-de-sac footways and footpaths which provide the dwelling with direct pedestrian routes to an existing highway maintainable at public expense have been constructed up to and including base course level;
 - c) The cul-de-sac visibility splays have been laid out to their final level;
 - d) The street lighting for the spine road and cul-de-sac and footpaths has been erected and is operational;
 - e) The car parking and any other vehicular access facility required for the dwelling by this permission has/have been completed;
 - f) The verge and service margin and vehicle crossing on the road frontage of this dwelling have been completed with the highway boundary properly defined; and
 - g) The street nameplates for the spine road and cul-de-sac have been provided and erected.
19. The detailed drawings required to be submitted by Condition 2 shall include the following information: boundary treatments, existing and proposed site levels, finished floor levels and materials, details of all areas of proposed public open space, and an ecological management plan based on the recommendations for ecological mitigation and enhancement contained in the submitted Ecological Appraisal.
20. The first Reserved Matters application to be submitted shall include a strategy for the management and maintenance of all green infrastructure across the application site (including, for the avoidance of doubt, all areas of Public Open Space). The Strategy document shall set out the management, maintenance, access and use arrangements for each area of the site, and a delivery plan identifying a trigger date for the completion of each of the

relevant land parcels. Reserved matters applications for the site shall incorporate the approved details.

21. As part of the Reserved Matters submission(s) referred to in Condition 2, a Waste Audit Statement shall be submitted to and approved in writing by the local planning authority, setting out how the construction and operation of the development will accord with best practice sustainable waste management principles. Construction shall thereafter be carried out in accordance with the agreed scheme.
22. Foul drainage from the development (and no other drainage) shall be connected to the public foul or combined sewer.
23. In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing immediately to the local planning authority. An investigation and risk assessment must be undertaken in accordance with the requirements of Condition 13, and where remediation is necessary a remediation scheme must be prepared in accordance with the requirements of Condition 14, which is subject to the approval in writing of the local planning authority. Following completion of measures identified in the approved remediation scheme a verification report must be prepared, which is subject to the approval in writing of the local planning authority in accordance with Condition 15.

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