The Planning Inspectorate

Appeal Decision

Site visit made on 20 August 2019

by Thomas Bristow BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 September 2019

Appeal Ref: APP/X1118/W/19/3227460
Whitemoor, Lane to Whitemoor Farm, Bishop's Tawton EX32 0HY

- 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 Mr John Taylor against the decision of North Devon District Council.
- The application Ref 63966, dated 26 September 2017, was refused by notice dated 2 November 2018.
- The development proposed is described on the application form as 'residential development'.

Decision

1. The appeal is dismissed.

Preliminary matters

2. There is some planning history to the appeal site, including its assessment as part of the Council's Strategic Housing Land Availability Assessment work (initially in 2011, the 'SHLAA'). An enforcement appeal related to use of the land was upheld in 2012.[1] That history, it appears, has contributed towards some fractiousness. The appellant has submitted a significant volume of correspondence regarding concerns and complaints, to which I will return.

3. Nevertheless each proposal must be determined on its merits in accordance with the development plan unless material considerations indicate otherwise. The development plan includes policies of the North Devon and Torridge Local Plan ('JLP'). That was adopted on 29 October 2018, four days before the Council's decision notice here. Nevertheless the JLP was submitted for examination on 10 June 2016, and paragraph 48 of the National Planning Policy Framework ('NPPF') sets out that weight may be given to policies in emerging plans before their adoption.

4. The JLP replaced formerly saved policies of the North Devon Local Plan (adopted originally in July 2006, the 'LP'). Nevertheless, given the case made by the appellant regarding the Council's assessment of the scheme amidst a changing policy context, I have referred to LP policies subsequently. In addition to the NPPF, I have had regard to various other material considerations, including the Planning Practice Guidance ('PPG').

5. There is also some ambiguity in the evidence before me over the ownership of, and responsibility for, Hammett's Lane (and, by consequence, how it should be

[1] Ref APP/X1118/C/12/2178081.

represented on the plans). On one side of the appeal site Mount Pleasant joins Hammett's Lane, which thereafter heads northwards. Hammett's Lane has the character of a rural track, is signed as a public bridleway, and referred to in the information before me as 'bridleway 15'. Most public rights of way are maintainable at public expense. It is unclear from the evidence before me whether Hammett's Lane is a restricted byway or not, and whether maintenance is required to a standard allowing for vehicular use. However that is not significant; the appellant has ventured different options for access.[2] It is also the general position that it falls to the appellant to substantiate their case.

6. Other than in respect of access, as the proposal is in outline, I have treated any details of appearance, landscaping, layout and scale as indicative (the 'reserved matters'). That includes plan BT.17/09/01, which shows that the northernmost element of the site would be given over to public open space, and also indicates where development would be of 'limited height'. That responds to the Landscape and Visual Impact Assessment ('LVIA'),[3] and the landform which, broadly, rises south to north through the appeal site.

7. I have used the description of development given in the application form in the banner heading above. However during the Council's determination of the application, the proposal emerged as for 36 dwellings. I note the appellant's concern that the scheme received some publicity on the basis of being for a greater number of homes. It is not, however, for me to comment on the conduct of the Parish Council. That is notwithstanding that the proposal, incidentally, appears to have been originally for 90 dwellings on a site of 5.9ha.[4] I also note that the appellant has expressed a willingness to accept conditions or obligations related to the proposal, as necessary.

8. On account of engagement with the County Council regarding highways since the application was made, with regard to additional habitat survey work indicating that the site falls outside of the recognised zone of influence of the Braunton Burrows Special Area of Conservation, and given the protections of other statutory regimes, the Council no longer maintain their objection to the scheme in relation to the fifth, sixth and seventh reason given in their decision notice. I will return to those matters subsequently.

The appellant's case

9. The appellant raises various concerns regarding the Council's timeliness, administration, and thoroughness. I have reviewed all the information submitted. However those are essentially procedural matters incidental to the acceptability of the development proposed with regard to the public interest. I also understand that the appellant has pursued various complaints separately. Whilst I acknowledge that history of engagement has evidently resulted in some frustration, planning is an intricate process, many planning departments have recently experienced reductions in resources, and staff turnover is not uncommon.

10. The appellant further contends that delays in determination were a conscious tactic to ensure the application was determined with reference to the JLP. That

[2] Including the potential demolition of No 23 Mount Pleasant to afford direct access.
[3] Prepared by WHLandscape, Ref 17.558 dated August 2017.
[4] Planning statement, paragraph 6.2.1.

is notwithstanding my reasoning in paragraph three. He also alleges bias against him, with reference to various other Council decisions. However in the first instance, and as reflected subsequently, it is unclear as to whether an assessment of the scheme under the present or former policy context would have been more 'advantageous'; the absence of a five year housing land supply of deliverable sites with reference to NPPF paragraphs 67 and 73 ('5YLS') would not leave 'any site vulnerable' as is contended.[5] The NPPF does not displace the statutory basis for decision taking set out above, and there are particular requirements which apply here at a national level as detailed in relation to the second main issue. Moreover it would have been open to the appellant to appeal against the failure of the Council to reach a decision within 13 weeks of the application (or, potentially, against non-validation).

11. In the second instance, based on the limited information before me, there appear to be significant differences between the cases cited by the appellant as having been treated more favourably (including in the nature of the development proposed and their surrounding context).[6] Permission Ref 61902 appears to relate to diversified holiday accommodation at Venn Quarry. Application Ref 58344, for one dwelling at Bishop's Tawton Reservoir, seems to have been withdrawn. I am told that permission has also been granted for the development of adjacent SHLAA site Ref SHA/BTA/489 (Ref 59756), albeit that is for a single dwelling on land adjacent to Stage Cross closer to the historic centre of Bishop's Tawton than the appeal site.

12. In that context I note the appellant's correspondence of 19 July 2019, in which he indicates that he will seek an award of costs. An application for costs has not, in the event, been made. Given my reasoning above there is nothing substantive to justify initiating that.[7]

Main issues

13. Against the context above, the main issues are (i) the effect of the development proposed on the character and appearance of the area (ii) whether or not it has been demonstrated suitable provision could be made to avoid adverse effects from surface water run-off, and (iii) whether or not the proposal would make appropriate provision for affordable housing.

Reasons

Character and appearance

14. Bishop's Tawton is an historic settlement, originally nestled in the topography albeit that more recent peripheral development has taken place. The village has an essentially linear form, principally to the east of the A377, around the confluence of the Landkey Stream and the River Taw. The appeal site amounts to around 5.56ha of hillside land by Whitemoor Grange, located close to properties along Mount Pleasant. With a number of tiers, there is a fall of some 40 metres across the appeal site. The northernmost element is a relatively high point in the topography. From that location there are, in certain directions, expansive views of the village and surrounding landscape.

[5] Nor was that the case with reference to paragraphs 47 and 49 of the 2012 iteration of the NPPF.
[6] Application Ref 57600 relates to land at River Bend, 54923 to Mount Sanford Green, as addressed below..
[7] With regard to the relevant elements of the PPG, including Reference ID: 16-029-20140306.

15. The latter is characterised principally by a mosaic of fields. Arable land fall immediately to the north and east. The LVIA aptly describes how the appeal site is a 'prominent elevated location' which is 'largely open to the wider landscape'. I understand that the appeal site falls within 'The Culm', 'Codden Hill and Wooded Estate' and 'Upper Farmed and Wooded Valley Slopes' landscape character areas (established nationally, at a County level, and at District level).[8] With varying emphasis all identify characteristic features of this area as a rolling open farmland cut by wooded valleys with exposed hillsides and expansive vistas.

16. The appeal site is partially consistent with prevailing landscape character. The Council's decision notice refers to the appeal site as 'undeveloped garden'. That is a reasonable summary. Whilst open and natural, the appeal site is landscaped and principally maintained as lawn, with various tracks through it, established trees and planting, with a small vineyard and orchard identified as 'G15' and 'G16' in the supporting Arboricultural Impact Assessment ('AIA'). Paragraph 17 of the inspector's reasoning in the 2012 appeal was that the relevant land in that instance 'would form part of the [residential] curtilage of Whitemoor Grange'.[9]

17. To the east and west the appeal site is contained by hedgebanks enclosing Whitemoor Hill and Mount Pleasant, and the surrounding area is not designated on account of its landscape quality (such as the North Devon Coasts Area of Outstanding Natural Beauty). Only a handful of trees, most of limited maturity or prominence, would be removed in order to facilitate development.[10] The visual effects of the proposal could be limited by virtue of taking a sensitive approach to landscaping, layout and scale reserved matters.

18. As a counterpoint to JLP policy ST07, which directs growth towards certain locations based on the scale and function of settlements, JLP policy DM08A sets out that development should be of an appropriate scale, mass and design that recognises and respects landscape character 'of both designated and undesignated landscapes'. A 'valued landscape' within the terms of NPPF paragraph 170 need not be one subject to formal protection. Moreover criterion (b) of that paragraph explains how planning should recognise the 'intrinsic character and beauty of the countryside'.

19. As set out above, there are various factors that would moderate the impact of 36 homes in this location. However the proposal would inherently introduce significant built development in what is presently essentially open natural land. That would be in a location which extends beyond the established built form of Bishop's Tawton, its settlement boundary defined in the JLP, and is out of keeping with the historic origins of the settlement. Notwithstanding the present lawful use of the appeal site, in my view, it presently contributes to landscape character on account of its relative openness and prominence (characteristic features of the wider area).

[8] In characterisation documents published by Natural England in 2015, by Devon County Council in 2012 and by North Devon and Torridge District Councils in 2010 respectively. In respect of the County-level study the appeal site shares some characteristics of the Taw Valley typology, and in relation to the District-level study the site appears to be at the fringes of the 'Estate Wooded Ridges & Hilltops' area.
[9] The accompanying plan to that decision encompasses the majority of the appeal site.
[10] Notably T37, T38, T39, T43 and the orchard and vineyard referred to above.

20. I note that the LVIA indicates that the proposal would have a 'major/ moderate' effect as perceived from Hammett's Lane, particularly when native leaf coverage is reduced during winter months. Whilst that is only one vantage point, it appears the photograph depicting that view in the LVIA includes several trees which are now proposed for removal (suggesting an even greater effect).[11] There are also, albeit at greater distance and partially obscured by intervening features, views of the appeal site from a wide range of surrounding vantage points. That is the case from around Sanctuary Close, Sentry Lane (part of the Macmillan Way footpath), Codden Hill and from around Grade I Listed Church of St Peter to the east of Tawstock.

21. From those vantage points the development proposed would appear as an uncharacteristic incursion into the rural hillside setting of Bishop's Tawton, which is significant to its character and therefore merits an appropriate degree of protection. In that context I note that the JLP consciously allocated two sites next to the A377, locations more consistent with the origins, layout and surrounding context to the village. By consequence, although the proposal would likely have a limited impact, that effect would nevertheless be detrimental to local character and appearance, in conflict with the relevant provisions of JLP policy DM08A and NPPF 107(b).

Surface water run-off

22. As set out above the established built form of Bishop's Tawton is principally to the east of the A377 arranged over the hillsides cut by the Landkey Stream and River Taw. The Landkey Stream is also referred to as the Venn Stream in the Council's 2009 Strategic Flood Risk Assessment ('SFRA'). The appeal site is elevated in the topography: the decline in level from it towards the A377 readily apparent in the steep gradient of Whitemoor Hill and Mount Pleasant.

23. As it falls south-westwards Whitemoor Hill becomes Sanders Lane. A significant area around the junction of Sanders Lane and the A377 is flood zone 2 or 3. I understand that surface water improvement works were undertaken in this location relatively recently, and that other works to reduce the potential effects of flooding have previously been undertaken elsewhere. The appeal site is, however, flood zone 1, i.e. at low probability of flooding, and does not fall within a Critical Drainage Area. I also note that the appellant's LVIA indicates that the ground in this broad location, above a predominantly mudstone and siltstone substrate, is typically 'freely draining, slightly acid loamy soils'.

24. I understand that, in part, it is the appellant's intention that surface water run-off from the site would be deal with via connection to existing mains provision. South West Water, as the relevant utility provider, do not appear to object to that in practical terms, notwithstanding that the Council note that no connection point is shown on the supporting plans. From the various documents before me I also note that the scheme would be relatively low density, and that it is the appellant's indicative intention to use permeable paving and to maintain some natural landscaping, thereby allowing for infiltration on site. Development must also comply with the relevant provisions of Building Regulations, including in respect of drainage and waste disposal.

[11] T26, T27, T28.

25. In brief, and amongst other things, JLP policy ST03 'Adapting to Climate Change and Strengthening Resilience' sets out that development should be located and designed so as to minimise flood risk, including through the use of measures to manage water effectively such as Sustainable Drainage Systems ('SUDS'). Those aims are common to NPPF paragraphs 155, 163 and 165 and, in so far as relevant in this case, broadly aligned with former LP policies DVS6 and DVS7. As set out above there are various factors that would moderate the effects of surface water-run off resulting from the proposal to some extent.

26. However, as attested to by the representations of many nearby residents and as detailed in the SFRA, flooding has occurred around the junction of Sanders Lane and the A377 on various occasions over the years. The SFRA notes that such events may overload the sewerage pumping station located opposite, closer to the Taw. There is no substantive evidence before me regarding the details of any improvements schemes undertaken in this location or their tolerances. Furthermore the SFRA cites as a contributor to flooding drainage from 'the large catchment of mainly fields surrounding the village', and by consequence that 'surface water discharges will need to be strictly controlled for any size of development'.

27. Notwithstanding that the appeal site is itself at low risk of flooding, with regard to the surrounding context, it is not unreasonable that careful attention is paid to this matter. I note that the SHLAA makes similar reference in respect of part of the appeal site to 'issues with the surface water drainage system downstream'.[12] Paragraph 12.406 of the JLP notes that 'all development must be designed to ensure the existing flooding problems in the village are not exacerbated'. I understand that the discussion in the LVIA of ground conditions was based on secondary sources as opposed to infiltration testing. Inevitably the depth before consolidated substrate differs within areas, and is likely to be more limited on hillsides than around valley floors (as does the precise topography and watercourse catchment area).

28. Although landscaping is a reserved matter, there are nevertheless no substantive details before me of likely run-off resulting from the proposal, SUDS or other attenuation measures relative to the design capacity of any improvement schemes. Furthermore NPPF paragraph 163 explains that 'where appropriate, applications should be supported by a site-specific flood-risk assessment'. Footnote 50 gives explains how that includes where the development of sites of one hectare of more are proposed in flood zone 1. There does not appear to be an associated site specific flood risk assessment. The appellant instead places reliance upon the SFRA, which, as set out above, indicates that there is a specific local context to flood risk in this location, likely to be exacerbated by increased hillside run-off.

29. In theory appropriately-worded conditions may be used to secure approval of drainage measures. The appellant contends that the Council has taken, or will take, that approach in respect of planning application Ref 57600 for 16 homes at land at River Bend. However the site in that instance is lower in the topography and to the west of Old Exeter Road without properties between it and the River Taw. Moreover it appears that application was supported by a

[12] Reference to SHA/BTA/581 in particular (broadly the central portion of the appeal site as shown on the associated map).

site specific flood risk assessment containing infiltration data and which recommended various mitigation measures. Consequently, for the above reasons, I conclude that it has not been demonstrated that suitable provision could be made to avoid adverse effects resulting from surface water run-off associated with the development, in conflict with the relevant provisions of JLP policy ST03 and elements of NPPF paragraphs 155, 163 and 165.

Affordable housing provision

30. Former LP policy HSG2 supported a moderate level of growth at Bishop's Tawton, in-principle. However that support did not extend beyond the defined settlement boundary as then illustrated on inset maps 9.1 and 9.2. The exception to that position was criterion (a) of policy HSG4 and HSG8. However the former was contingent on at least 50% of units being affordable, as now defined in the glossary to the NPPF. The latter was a rural exception site policy which made specific provision for housing to meet local affordable needs. Albeit abutting the settlement boundary as defined in the LP, the appeal site was not within it. Whilst I accept that a different cocktail of considerations applied before the adoption the JLP, the appellant is not correct to contend that the principle of residential development would have 'been within policy as defined by the former local plan…'.

31. In overarching terms JLP policy ST18 criterion (1)(a) sets a baseline of 30% affordable housing provision. Former policy HSG7 'Affordable housing in residential schemes' set out an affordable housing requirement of at least 1,200 homes over the plan period. That was relative to about 3,200 dwellings for the District in policy HSG1A 'Total housing provision', crudely some 37.5%. Whilst the overall housing requirement has changed, the proportion of affordable housing provision necessary to meet targets on a site-by-site basis therefore appears to have reduced.

32. Criterion (5) of JLP policy ST18 makes provision for negotiation of an affordable housing contribution on the basis of viability. Nevertheless, in so far as adjacent the appeal site, the development boundary for Bishop's Tawton in the JLP remains as in the LP. I note that JLP policy ST07, criterion (2), seeks to enable an appropriate level of development 'in villages including Bishop's Tawton' (my emphasis) 'in accordance with the local spatial strategy to meet local needs and growth aspirations'. In that respect policy BTA seeks provision of a minimum of 36 new dwellings in the village, albeit intended to be 'delivered through extant planning permissions and two site allocations'.

33. Conversely JLP paragraph 12.406 explains that outside development boundaries, development will only be supported on an 'exceptional basis'. That term does not appear to be specifically defined, albeit that policy ST19 is entitled 'Affordable Housing on Exception Sites'. As with HSG8, and NPPF paragraph 64(b), the justification for market housing in that context stems from provision of affordable housing, rather than visa versa.[13] There is no substantive evidence before me in respect of local needs, of delivery in Bishop's Tawton relative to the anticipated trajectory in the JLP, or of particular justification for the necessity of this site with reference to criterion (d) of JLP policy ST19.

[13] Within the land associated with Whitemoor Grange and with residential development to the south and east the appeal site cannot reasonably be defined as isolated within the terms of NPPF paragraph 79.

34. Setting that context aside, the appellant's position in respect of affordable housing provision is vague. The application form, for example, does not contain information in this respect. The PPG explains that a condition which would make a proposal substantially different from that set out in the application are inappropriate.[14] The lack of precision in this respect may be as the application is in outline, albeit that affordable housing provision is not a matter defined in legislation as reservable for future determination.

35. The appellant potentially accepts provision of between 25% and 35% affordable housing subject to viability assessment. However there is no obligation to secure that compliant with NPPF paragraph 56 (nor is there in other respects with reference to the infrastructure provision requirements in JLP policy ST23 or DM10). There is likewise no substantive evidence in relation to viability. There are also various references to nine affordable homes being proposed. That represents 25% of 36 units, significantly below the level set out in JLP policy ST18.

36. The PPG guides that a negatively worded condition securing an obligation may be applied in exceptional circumstances in respect of particularly complex development, which cannot reasonably describe the situation here.[15] In two of the cases elsewhere brought to my attention by the appellant, setting aside delivery to date, affordable housing provision sought was around 35% to 40% (with a further scheme cited appearing mixed-use). There is no substantive evidence as to the circumstances that applied in other instances, for example in relation to viability.

37. Therefore in terms of justification, the level of affordable housing provision indicates and given the absence of a mechanism to secure that, I conclude that the proposal would not make appropriate provision for affordable housing. The proposal therefore conflicts with the approach in JLP policies ST18 and ST19 (and, by consequence, with NPPF paragraph 34).

Other matters

38. I have taken account of the representations of nearby residents, including in respect of pressure on utilities and infrastructure provision, land ownership constraints, and the effects of the proposal on the structural integrity of neighbouring properties and the living conditions of occupants. Some level of growth in Bishop's Tawton is, however, accorded in-principle support via the plan, and conditions, reserved matters details, or the provisions of separate regimes may mitigate the potential for adverse effects to some extent.[16] Nevertheless, and noting my reasoning in paragraphs seven and eight of this decision, even were the development proposed acceptable in other respects that would be effectively neutral in the planning balance (rather than carrying any substantive weight in favour of allowing the appeal).

39. The Council indicate that they are able to demonstrate in excess of a 5YLS, amounting to around 6.24 years' worth of provision (based on shortfall being

[14] Reference ID: 21a-012-20140306.
[15] Reference ID: 21a-010-20190723.
[16] Including provisions in respect of effects amounting to a nuisance under the Environmental Protection Act 1990 as amended, or via the Party Wall Act regarding works affecting an adjoining property, for example.

distributed over the plan period with a 20% buffer). The appellant challenges that position, referring me to a Freedom of Information response, the essence of which is that the Council appear to acknowledge that the SHLAA needs refreshing and updating. However, within the terms of NPPF bullet point 38, the JLP may be still be considered 'recently adopted'. Regardless of that, there is little indication from the appellant as to what, in his view, is the current level of supply. Whilst the overall JLP housing figure of 17,220 over the plan period is not expressed as a maximum, it appears that provision for the appropriate level of development set at a strategic level for Bishop's Tawton, also 36 dwellings, would be met through existing consents and two allocations. Housing delivery data for the District indicates delivery at 128% relative to requirements over the past three years.

40. I acknowledge the proposal would entail certain benefits, including in supporting employment during construction and as future occupants would bring trade to nearby services and facilities. However the contribution of this scheme would be relatively modest compared against the overall plan requirement. There is nothing to indicate that anticipated delivery is faltering in this location. Moreover the benefits of the scheme would be confined to a numerical addition to housing stock rather than in terms of quality: neither the support in the JLP nor NPPF for new housing is at the expense of ensuring that all development integrates appropriately with its surroundings. As such no other matters are sufficient to justify allowing the appeal relative to the harm that I have identified would result. Inherent in that reasoning is that, based on the information before me, the adverse impacts of the scheme would significantly and demonstrably outweigh the benefits. That is notwithstanding that potential adverse effects resulting from surface water run-off to flooding vulnerability provides a clear reason for refusing permission in accordance with NPPF paragraph 11(d)(i).

Conclusion

41. For the above reasons, having taken account of the development plan as a whole, the approach in the NPPF, and all other relevant material considerations, I conclude that the appeal should be dismissed.

Thomas Bristow

INSPECTOR