



Appeal Decision

Site visit made on 14 August 2019

by L Crouch BA (Hons) MSc IHBC

an Inspector appointed by the Secretary of State

Decision date: 19th September 2019

Appeal Ref: APP/P1235/W/19/3226368

Land to the East of Hetherly Road, Weymouth DT3 5JN

- 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 Palmer Homes Ltd against the decision of Weymouth & Portland Borough Council.
 - The application Ref WP/18/00895/OUT, dated 2 November 2018, was refused by notice dated 6 February 2019.
 - The development proposed is to erect five detached dwellings.
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Decision

1. The appeal is allowed.
2. The appeal is allowed and outline planning permission is granted for the erection of five detached dwellings at Land to the East of Hetherly Road, Weymouth, DT3 5JN in accordance with the terms of the application, Ref WP/18/00895/OUT, dated 2 November 2018, and the plans submitted with it, subject to the conditions set out in the attached schedule.

Application for costs

3. An application for costs was made by Palmer Homes Ltd against Dorset Council. This application is the subject of a separate Decision.

Procedural Matters

4. The planning application was in outline with all matters reserved. The application is accompanied by plans showing a potential layout. I have regarded these as indicative.
5. Weymouth & Portland Borough Council determined the outline planning permission. The Council has since become a unitary authority and is now known as Dorset Council. The West Dorset, Weymouth and Portland Local Plan 2015 (LP) remains the relevant Development Plan until such time as it is updated by the new Council.

Main Issue

6. The main issue is whether or not the proposed development would be a suitable location for housing having regard to implications for local open space and to local and national planning policies.

Reasons

7. The appeal site is a grassed area of land, bordered by hedgerows and trees. The site helps form a visual separation between the development of Hetherly Road and St. Andrews Avenue, which is linked by an open pedestrian footpath and runs across the appeal site. The pedestrian link is not a formal right of way.
8. This pedestrian footpath crosses between the two areas of grassed open land, which is the subject of this appeal. The appellant has confirmed that the grassed open space has been used by the public on an 'ad hoc basis', but there is no formal right of way over the land. The appellant states that people have been effectively 'trespassing'. It is therefore not formally publicly accessible open space, and I give this significant weight.
9. The area of land has been confirmed by way of a Certificate of Lawful Use for Existing Development (CLEUD) as an area of public amenity land in planning terms. The appellant states that this does not 'alter the fact that there is no right of way or right of access over the site'. The appellant has confirmed that the pathway would be retained though the appeal site. I saw from my site visit that this would allow the connectivity between the communities to be maintained.
10. Policy COM5 of the LP addresses development within open spaces of public value. This policy's emphasis, although not explicit, is on public open space, serving the community. This, amongst other things, seeks to safeguard against loss of space unless amongst other criteria there is an alternative replacement provision made, or it can be demonstrated that it is surplus to requirements and there is no need for alternative open space. The Council has refused the application because it does not make provision for alternative open space to replace this loss. However, the appellant's position is that there is no need for alternative open space, which I shall explore below.
11. The appellant contends that the land is surplus to requirement as it is being sold by the Council, and that there is sufficient green space provision within the area. This is highlighted by the piece of land not being identified within the Weymouth and Portland Council Open Space, Sport and Recreational Assessment (2007), nor on the LP proposal map or Green Infrastructure Network map. The appellant has also highlighted the Green Infrastructure Background Paper (2017), however this is an early consultation document and I give it little weight.
12. Other examples of open space have been brought to my attention within the area including a country park, nature reserves and a nature park. Whilst these vary in size and scale from the evidence that is before me, and from my site visit, it is evident that the area has access to large open space at Lorton Valley Nature Park. This would serve aspects of locals' needs and also some of the uses taking place on the appeal site such as dog walking.
13. However, I am aware from representation that this land is valued for its local accessibility for all ages, for being a 'green lung' and its positioning directly within the community for informal recreation. This would not be provided in the same way in the existing large strategic open spaces as Lorton Valley Nature Park. However, access to the land could be removed by the landowner outside

of this planning appeal. Therefore, overall, I am content that the land is considered to be surplus to requirements.

14. Additionally, COM5 bullet point 4 required that there should also be no need for alternative open space of public value which could reasonably take place at the site. The appellant has supplied a table which sets out the size standards for different types of outdoor space provision and contends that due to the size of the open space it could not be used for any other reasonable uses, other than an allotment or community garden. However, the characteristics of the appeal site and surrounding gardens means that the appellant does not consider these alternative uses to be appropriate because of the large surrounding gardens, meaning such use can take place within the private gardens. I could also see from my site visit that parking on site for the allotments would be problematic due to the contained nature of the site. In any event as it is not public open space this does not alter my findings.
15. I recognise that the proposal would result in the loss of this green space between communities. This would have a degree of harm on the users of this open space. However, this is not public open space, and the footpath through will be maintained.
16. For the reasons given above, the proposed development would be a suitable location for housing, having regard to the public value of the open space, to local and national planning policies and would not conflict with Policy COM5 of the LP, which seeks to prevent the loss of such open space unless amongst other criteria, there is an alternative replacement provision made, or it can be demonstrated that it is surplus to requirements or there is no need for alternative open space.
17. The site is within a sustainable location and has been reviewed through the Strategic Housing Land Availability Assessment (SHLAA) process. The Council cannot demonstrate a current Housing Land Supply (HLS) position as required by the Framework, which currently stands at 4.88 years of supply. The site can accommodate five dwellings which would make a positive contribution to meeting the shortfall and I also give this great weight.

Other Matters

18. I note that the Council is undertaking a LP review within which the appellant states there is an intention to focus sustainable development on Weymouth and to increase a local nature reserve in size to provide an additional area of open space. However, this review is in the early stages. Consequently, I give it little weight.

Conditions

19. The Council has suggested a number of conditions in the event that the appeal is allowed. I have considered these in the light of the tests set out in paragraph 56 of the Framework.
20. In addition to the standard time limit conditions for reserved matters, a condition is required to ensure that development is carried out in accordance with the approved plans in the interests of certainty. Additionally, there is a condition for further 'reserved matters' details to be submitted if they have not been submitted within the application and which concern the layout, scale, appearance, access or landscaping.

21. A condition to provide vehicular parking and turning are necessary to protect the impacts on the local highway network and the appropriate development of the site.
22. A condition has been included on surface water drainage details. This is necessary to ensure that the site is properly drained, and the surface water does not drain from the site on to the public highway.
23. A condition has also been included which ensures that the development is in accordance with the Abbas Ecology report. This is in the interest of nature conservation.

Conclusion

24. Accordingly, the appeal is allowed.

L Crouch

INSPECTOR

SCHEDULE OF CONDITIONS

1. Before any development is commenced details of 'reserved matters' (that is any matters in respect of which details have not been given in the application and which concern the layout, scale, appearance, access or landscaping), shall be submitted to the Local Planning Authority for their subsequent approval.
2. Application for approval of any 'reserved matter' must be made not later than the expiration of three years beginning with the date of this permission.
3. The development to which this permission relates must be begun not later than the expiration of two years from the final approval of the reserved matters or in the case of approval on different dates, the final approval of the last such matter to be approved.
4. The development hereby permitted shall be carried out in accordance with the following approved plans: • Site, Block and Location Plan - Drawing Number 9106/100A.
5. Before the development hereby approved is occupied or utilised the informal private turning area and parking shown on the submitted plans must have been constructed. Thereafter, these areas must be permanently maintained, kept free from obstruction and available for the purposes specified.
6. Before the development hereby approved is occupied or utilised provision must be made to ensure that no surface water drains directly from the site onto the adjacent public highway.
7. The development hereby approved shall be carried out in accordance with the Jennifer Chamblor, Abbas Ecology report dated 18.12.18 and as per the Dorset County Council Certificate of Approval dated 18.12.18.

END OF SCHEDULE