



Appeal Decision

Site visit made on 24 September 2019

by Matthew Jones BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 December 2019

Appeal Ref: APP/Y1138/W/19/3232381

Land North of Frog Street, Bampton, Devon EX16 9PX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
 - The appeal is made by Mr P Booth of Land Allocation Ltd against Mid Devon District Council.
 - The application Ref 19/00413/MOUT, is dated 27 February 2019.
 - The development proposed is described as '*outline application for residential development for up to 37 dwellings with associated vehicular and pedestrian access on Land North of Frog Street*'.
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Decision

1. The appeal is dismissed and planning permission is refused.

Application for Costs

2. An application for costs was made by Mr P Booth of Land Allocation Ltd against Mid Devon District Council. This is the subject of a separate decision.

Procedural and Preliminary Matters

3. The planning application was submitted in outline with all matters aside from access reserved. I assessed it as such, treating drawing Refs 02 and 03 as illustrative only, aside from where they relate to the site access.
4. The Council failed to give notice of its decision within the prescribed period. Despite this, three refusal reasons are contained within the Council's appeal statement. The first relies on Policies S1 and S13 of the emerging Local Plan Review (ELPR), which has completed examination and is at an advanced stage of preparation. However, there remain outstanding issues around the ELPR's housing trajectory and ability to maintain a five-year supply of deliverable housing sites during its early years. As this could potentially influence its strategic approach, the ELPR attracted limited weight in my reasoning.
5. The second reason for refusal relates to the character and appearance of the area. The third refers to the absence of a legal agreement to secure planning obligations. During the appeal the appellant produced a completed Unilateral Undertaking (UU). I return to this later in this decision.
6. The Council also drew my attention to a recent appeal decision at a site in Willand, elsewhere in Mid Devon¹. The appellant had the opportunity to comment on this decision during the appeal, and I also had regard to it.

¹ Appeal Ref: APP/Y1138/W/18/3214685

Main Issues

7. I therefore consider the main issues to be:

- the effect of the proposal on the character and appearance of the area; and,
- the suitability of the site for housing, having regard to local policy for the delivery of housing and employment.

Reasons

Character and appearance

8. Policies COR2 and COR16 of the Core Strategy (adopted 2007) (CS) and Policy DM2 of the Local Plan Part 3 Development Management Policies (adopted 2013) (LP3), amongst other things, concern the effect of development on the character and appearance of the area. As such, they are the most important development plan policies for determining this appeal in relation to this issue. They are consistent with the National Planning Policy Framework (the Framework), Paragraph 170 of which states that decisions should contribute to and enhance the natural and local environment by recognising the intrinsic character and beauty of the countryside. On this basis, I find that Policies COR2 and COR16 of the CS and Policy DM2 of the LP3 are not out-of-date.
9. The appeal site is formed of tree scattered hedgerows and pastureland located directly to the north of the small market town of Bampton. It drops from north east to south west, sharply at its south west corner, and is separated from the nearest housing at Bouchier Close by the sunken Frog Lane. The site is highly noticeable from the B3190, which is directly to the east and appears to be one of the main routes to and from the town. It is also visible from the Public Right of Way (PROW) network, particularly from PROWs to the east (Footpath 6) and west (Footpath 7).
10. The appellant considers the town to be the dominant feature in the area around the appeal site. However, Bouchier Close reads as a narrow, compact and low-profile projection of housing into an otherwise rural location, subservient to the undulating farmed valley slopes that characterise the landscape. Whilst I acknowledge that this area benefits from no specific landscape designation, it is nonetheless an attractive rural environment, which, including the site, exhibits a number of features identified within the Upper Farmed and Wooded Valley Slopes' Landscape Character Area (LCA) set out within the Mid Devon Landscape Character Assessment (October 2011).
11. The scheme seeks residential development of up to 37 dwellings. The drawings indicate that the proposed housing would be spread consistently across the two fields. A row of properties would front the B3190, behind a 'green buffer', with access proposed from this main road. Housing would extend to the highest, northern part of the site and its lowest southern ebb. It is envisaged that the houses would be over two-storeys, under dual pitched roofs, and it is intended to take reference from the density and layout of housing in Bampton nearby.
12. Given the prominence and rising topography of the site, and its embedded role within the countryside, I find that the illustrated layout and scale of development would likely appear as an incongruous and somewhat isolated intervention of housing within this predominately rural location. This is most vividly demonstrated within the evidence from Viewpoints 6 and 7 of the

appellant's Landscape Visual Impact Assessment (LVIA), which are taken from the PROWs to the west and east respectively.

13. Considering the density of the housing and the likely proximity of buildings to one another and to site boundaries, green infrastructure would do little to mitigate the development. Likewise, given the site's degree of visual detachment from Bouchier Close, conformance with its houses with regard to design and finish materials would have little impact in resolving this harm.
14. Furthermore, it is not explained how the houses and the pond would be sited in a manner which would respond to the steep south west corner of the site. Given the gradient, it seems to me that quite extensive engineering, including retaining structures, would likely be required throughout. This could have a significant impact upon the area. In the same terms, it is unclear how the pedestrian link to Frog Street would be satisfactorily achieved.
15. I acknowledge the LVIA's conclusions regarding the effect of the proposal on the LCA and I accept that most of the visual effects of the proposal would be localised. However, this would not diminish the importance that I place on the harm that would arise, owing to the site's prominence in these views and the quality of the landscape I have identified.
16. I recognise that this proposal is currently in outline and that the detailed matters aside from access are reserved for subsequent consideration. I am also mindful that the site is allocated for development. However, this is nonetheless the substantive submission for development, and I must establish now that the up to 37 dwellings proposed could be accommodated satisfactorily on the site. On the basis of the evidence submitted, I can only reach the conclusion that significant and permanent harm to the landscape would arise.
17. I therefore find on this issue that the proposal would have a harmful effect on the character and appearance of the area. It would conflict with Policies COR2 criterion c) and COR16 criterion f) of the Core Strategy and Policies DM1 and DM2 criteria a), b), c) and e) of the Local Plan Part 3 Development Management Policies (adopted 2013) (LP3). I also find conflict with Policies S1, S9 and S13 of the ELPR in this regard. However, given the status of this document, this conflict has had limited weight in my assessment.

Suitability of the site

18. The appeal site is within the Bampton settlement boundary and forms part of a larger site allocated for development under Policy AL/BA/2 of the Allocations and infrastructure Development Plan Document (adopted 2011) (AIDPD). This allocation seeks to deliver Bampton's allotment of housing and employment development set out together within strategic Policies COR3, COR4, COR12 and COR16 of the CS for the period up until 2026. These are therefore the most important policies for determining the appeal in relation to this issue.
19. Both the main parties consider them out-of-date and, to this end, the appellant has referred to earlier appeals² and the Council's 2018 Housing Land Availability Summary. However, of greatest relevance is the most recent appeal decision provided by the Council, which is concurrent with the latest version of the Framework. This is at Willand, where the Inspector accepted that there was a 7.58-year supply of deliverable housing sites (DHS) against a need of 357

² Appeal Refs: 3025120, 3197492, 3208621, 3189570 and 3178479

dwellingings per annum. Paragraph 74 of the Framework does not outline the only ways to evidence a Council's current quantum of DHS, and the undisputed figures of need and supply accepted at Willand are the most up-to-date I have.

20. Given that Policy COR3 of the CS sets an annual minimal housing target of 290 dwellingings for this stage of the plan (2016-2026), it appears to me that, notwithstanding the current supply of DHS in Mid Devon, the CS's approach to housing delivery falls below that required. As Policy AL/BA/2 of the AIDPD and Policies COR3, COR4, COR12 and COR16 of the CS are predicated on the CS's approach to housing supply, it follows that they are out-of-date.
21. Policy AL/BA/2 sets out a number of requirements. In the first instance, it specifies that development shall be mixed-use. This includes 4000 square metres of employment floorspace, which shall be brought forward with the housing and be completed and available for use prior to the occupation of half of the 40 allocated dwellingings. As the proposal would provide only housing, it would conflict with the policy in this regard.
22. I therefore conclude on this issue that the proposal would not be a suitable location for housing having regard to local policy for the delivery of housing and employment. It would conflict with Policy AL/BA/2 of the AIDPD and, it follows, Policies COR3, COR4 and COR16 of the CS. As these policies are out-of-date, the conflict with them attracts limited weight. I have also found conflict with Policies S1, S9 and S13 of the ELPR in this regard. However, given the status of this document, this conflict attracts even less weight.
23. Reference has also been made to Policies COR17 and COR18 of the CS. Policy COR17 appears to relate exclusively to smaller settlements than Bampton. Policy COR18 regards the countryside which, notwithstanding the physical attributes of the site, I consider not to be applicable. This is owing to the site's allocation for development and inclusion within the Bampton settlement boundary. For these reasons Policies COR17 and COR18 of the CS have not been determinative in reaching my decision.

Other Matters

24. The UU submitted during the appeal seeks to secure planning obligations in relation to open space provision, education, health, transport, waste and recycling and 35% on site affordable housing. However, as I am dismissing this appeal for other reasons, I have not considered it further.
25. The appellant's Preliminary Ecological Appraisal identifies that the removal and management of mature hedgerow could lead to the disturbance, death or injury of dormice. Consequently, as there is a reasonable likelihood of a protected species being present and affected by the development, if I had been minded to allow the appeal, I would have had to consider this matter further.

Planning Balance and Conclusion

26. Section 38(6)³ places upon me a duty to determine this appeal in accordance with the development plan unless material considerations indicate otherwise. I have found that the most important policies for determining this appeal relate to the character and appearance of the area and the supply of housing and employment. The former policies are consistent with the Framework and attract

³ Of the Planning and Compulsory Purchase Act 2004.

full weight, but the latter are out-of-date and have limited weight. On this basis, I find that the presumption in favour of sustainable development, as set out in Paragraph 11 d) of the Framework, is engaged.

27. The government is seeking to significantly boost the supply of housing. The provision of 37 houses, built to modern standards, would contribute further to local stock. The benefits of this would be somewhat tempered by the Council's current supply of DHS. The housing would also include up to 13 affordable homes, of which there is unmet need in Mid Devon. Residents of the proposal would make use of the range of accessible facilities within the town, enhancing their vitality. The construction phase would provide limited economic benefits through job creation. Open space provision could potentially benefit both existing and future residents. Landscaping may offer a very modest opportunity for enhanced biodiversity. Given its scale, I find these benefits to weigh moderately in the scheme's favour.
28. However, the proposal would conflict with the development plan's approach to the delivery of housing and employment. The plans indicate that the housing would have a harmful effect on the character and appearance of the area. Whilst the conflict with housing and employment policy is of limited weight, the degree of permanent harm I have identified to the character and appearance of the area would be significant. Consequently, these adverse impacts would significantly and demonstrably outweigh the benefits of the scheme.
29. I therefore find that the proposal would conflict with the development plan when read as a whole. There are no other considerations, including the Framework, that outweigh this conflict.
30. Taking all matters raised into account, I conclude that the appeal should be dismissed, and planning permission refused.

Matthew Jones

INSPECTOR