



Appeal Decision

Site visit made on 14 October 2019

by David Wyborn BSc(Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 December 2019

Appeal Ref: APP/U1105/W/19/3231349

Land to the south of King Alfred Way, Newton Poppleford EX10 0DG

- 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 Rix of Clinton Devon Estates against East Devon District Council.
 - The application Ref 18/2608/OUT, is dated 13 November 2018.
 - The development proposed is the construction of up to two dwellings.
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Decision

1. The appeal is allowed and planning permission granted for the construction of up to two dwellings, at Land to the south of King Alfred Way, Newton Poppleford EX10 0DG in accordance with the terms of the application Ref 18/2608/OUT dated 13 November 2018, subject to the following conditions:
 - 1) Details of the 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. The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
 - 3) The development hereby permitted shall be carried out in accordance with the approved plan : Site Location Plan Drawing No 12706-L01-01 Rev B.
 - 4) Development shall be carried out in accordance with the recommendations and mitigation measures in the Ecological Appraisal prepared by EAD Ecology dated 13 November 2018.

Application for costs

2. An application for costs was made by Mr Rix of Clinton Devon Estates against East Devon District Council. This application is the subject of a separate Decision.

Procedural Matters

3. The application was made in outline with access for consideration at this stage and appearance, landscaping, layout and scale reserved. The proposal states

that the scheme is for up to two dwellings and an illustrative site layout plan has been provided. I have had regard to these details as to what the appellant has in mind for the scheme.

4. The application the subject of this appeal was not determined within the statutory period and the appellant appealed on the basis of non-determination. The Council, however, has subsequently indicated in their appeal statement, following a committee resolution, that had it had the opportunity to determine the application it would have been approved with conditions.

Main Issue

5. In the light of the Council's position set out above, the main issue is whether there are clear and convincing reasons that would lead me to a different conclusion such that other considerations would indicate that the appeal should be dismissed.

Reasons

6. The Committee reports¹ in respect of the appeal development reiterates the planning advice when the original outline application² for the wider scheme was considered. It is explained that the 40 dwellings did not generate a need for a doctors' surgery and as such its provision as part of the planning permission could not be legally justified. It is further said that the surgery was not required to mitigate the development and the loss of the site from this proposed use cannot be resisted. The advice in the report, which was accepted by the Committee on 6 August 2019, indicates that there would not be conflict with the relevant strategy and policy in the East Devon Local Plan 2013-2031 (the Local Plan) concerning community facilities because the site is not allocated for or currently in a community use and the proposal would not result in the closure of an existing facility. This information led the Council to conclude that were it to have been able to determine the application it would have been approved.
7. I have carefully considered and taken into account all the representations including those from local residents, Councillors and the Parish Council. I fully appreciate that a new surgery would be very much welcomed by the local community for the convenience and modern standard of accommodation it could provide. It is clear that the surgery formed part of the original package of proposals for the site and I have noted the background history that has led to the present position. I have also had regard to all the efforts from various parties over a number of years that have sought to facilitate and assist with the provision of a medical practice on the site, and I have noted the comments on the funding position.
8. However, notwithstanding all these matters, I am conscious that the planning position is that the provision of the surgery was not a requirement of the original permission and therefore its delivery could not, and was not, secured.

¹ Dated 5 March 2019, 11 June 2019 and 6 August 2019.

² Application Ref 13/0316/MOUT – Land South Of King Alfred Way Newton Poppleford - Outline application for the development of up to 40 houses, doctors' surgery and associated infrastructure, open space and landscaping (all matters except access reserved). The report of 8 May 2014 explains that this was a reconsideration of this application, following a legal challenge which the Council submitted to judgement and the decision was quashed on two issues, one of which was that the provision of the doctor's surgery should not have been secured through the unilateral undertaking because the provision of the surgery was not necessary to make the development acceptable.

The non-provision of the facility would not conflict with the development plan and, having regard to all the information, I have not been presented with a clear and convincing planning justification that would lead me to a different assessment and conclusion on this matter other than the one ultimately reached by the Council.

9. A range of other concerns and objections have been raised in representations and I will examine the key planning matters in turn. The site is located within the East Devon Area of Outstanding Natural Beauty (AONB) where the conservation and enhancement of landscape and scenic beauty are matters which carry great weight. However, as the site now lies within the Built-Up Area Boundary of Newton Poppleford, and is located amongst other buildings including the new housing, the development would not adversely affect the AONB in this case. The scheme is for 2 units and therefore does not constitute major development.
10. The site originally formed part of wider agricultural land. However, the development of the site has already been sanctioned by the earlier permission for the surgery and therefore any loss of agricultural land that may result is a matter of very limited weight.
11. I have noted the comments regarding the provision of affordable housing. I accept the case set out in the Committee Report that the site has not been intentionally sub-divided and that the scheme for 2 dwellings would not generate a need for an affordable housing requirement. In terms of the concerns with highway safety, the site would be likely to generate less traffic in its proposed residential use than the approved surgery. Any issue with regard to the impact on the character and appearance of the area and upon the living conditions of neighbours from the proposal, including the raised rear gardens and the bulk and position of buildings, are matters that can be addressed at the reserved matters stage, were permission to be granted.
12. The emerging Neighbourhood Plan has been drawn to my attention. However, I have little information on the nature of any policies and how they would affect the proposal and therefore can only attribute this matter very limited weight.
13. It is said that the application does not include a change of use of the land. However, the application is clear that the proposal is for residential development and this is a use of the land and therefore I consider that there are no procedural irregularities in this respect.
14. Taking all these matters into account, I conclude that I have not found any clear and convincing reasons that would lead me to a different conclusion from the Council's position or any other considerations that indicate that the appeal should be dismissed. On the information before me, the scheme would not conflict with the development plan or the National Planning Policy Framework and there are no planning considerations which would be of such weight as to indicate that a decision should be made otherwise than in favour of the proposal.

Other Matters

15. The site lies within the zone of recreational influence of the East Devon Heaths Special Protection Area (SPA) and the East Devon Pebblebed Heaths Special Area of Conservation (SAC) (the SPA/SAC). The information indicates that the

SPA/SAC is well frequented by the public and residents of the proposed dwellings would be likely to visit. The evidence before me is that the proposal, particularly when combined with other development in the area, would have a significant effect on this habitats site through increased disturbance through recreational activity.

16. The Council has adopted the South-east Devon European Site Mitigation Strategy (the Mitigation Strategy) and this sets out a costed approach to infrastructure and other projects, with a payment per additional dwelling, to mitigate the recreational impacts.
17. The appellant has submitted a signed and dated Undertaking under Section 111 of the Local Government Act 1972 and paid the costed sum to meet the requirements of the Mitigation Strategy. The Council has confirmed that while the figure is now an interim amount, any additional sum to meet the revised amount that may be necessary would be collected by the Community Infrastructure Levy (CIL). I understand that Natural England are satisfied with this approach. I am content, based on the evidence before me, that the financial contribution through the Agreement (and any subsequent amount from CIL) would be spent on the identified projects and therefore the mitigation would be secured. I therefore find, in undertaking my Appropriate Assessment in accordance with the Conservation of Habitats and Species Regulations 2017 (as amended), that the proposal, as mitigated, would not, either alone or in combination with other projects, adversely affect the integrity of SPA/SAC in this case.

Conditions

18. I have had regard to the conditions suggested by the Council and the advice in the Planning Practice Guidance. The standard outline conditions and a condition specifying the approved plan is necessary in the interests of certainty. I have not included the layout plan as this is identified for illustrative purposes and layout is a reserved matter.
19. The two conditions suggested by the Council that refer to landscaping are not necessary at this outline stage as landscaping is a reserved matter and this can be addressed at the latter stage. In the interests of nature conservation, a condition is necessary to ensure that the development is carried out in accordance with the recommendations and mitigation set out in the Ecological Appraisal.

Conclusion

20. Having regard to the above, and taking all other matters into account and subject to the recommended conditions, I conclude that the appeal should be allowed.

David Wyborn

INSPECTOR